

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No.1350 of 2019

ThangavelPetitioner/Father of Detenu

-vs-

1.State of Tamil Nadu
Rep. by its Secretary of State,
Prohibition and Excise Department,
St. George Fort, Chennai - 600 009

2.The Commissioner of Police,
Greater Chennai, Poonamallee High Road,
Vepery, Chennai - 600 007. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling upon the production of the records relating to the detention order dated 15.06.2019 made in detention order Memo No.330/BCDFGIISSSV/2019 passed by the second respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's son Pandiyan @ Dhilpandiyan, Son of Thangavel, aged about 34 years branded as Goonda and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.Mohan Raj

For Respondents : Mr.R.Prathap Kumar
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the father of the detenu Pandiyan @ Dhilpandiyan, Son of Thangavel, aged about 34 years. The detenu has been detained by the second respondent by his order in Memo No.330/BCDFGIISSSV/2019 dated 15.06.2019, holding to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act

14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the materials available on record.

3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru. Pandiyan @ Dhilpandiyan is in remand in R-10 M.G.R. Nagar Police Station Crime No.351/2019 and he has not moved any bail application for the above case. The sponsoring authority has stated that Thiru. Pandiyan @ Dhilpandiyan's relatives are taking action to take him out on bail in R-10 M.G.R. Nagar Police Station Crime No.351/2019 by filing bail application before the appropriate court. It is pertinent to note that in a case registered at S-15 Selaiyur Police Station Cr.No.47/2018 under Sections 341, 294(b), 392, 397, 336, 427 and 506(ii) IPC bail was granted by the Court of Principal District and Sessions Judge of Kancheepuram at Chengalpattu, in CrI.M.P.No.336/2018. Hence, I infer that there is real possibility of his coming out on bail in R-10 M.G.R. Nagar Police Station Crime No.351/2019 by filing bail application before the appropriate court since in similarly placed cases bail is granted by courts after a lapse of time. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration in a similar case registered at S-15 Selaiyur Police Station Cr.No.47/2018 under Sections 341, 294(b), 392, 397, 336, 427 and 506(ii) IPC bail was granted by the Court of Principal District and Sessions Judge of Kancheepuram at Chengalpattu, in CrI.M.P.No.336/2018 and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The similar case

relied on by the authority was registered for the offences under Sections 341, 294(b), 392, 397, 336, 427 and 506(ii) IPC whereas the offences involved in the ground case are under Sections 342, 352, 392 r/w 397 and 506(ii) IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.330/BCDFGISSSV/2019 dated 15.06.2019, passed by the second respondent is set aside. The detenu, namely, Pandiyan @ Dhilpandiyan, Son of Thangavel, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

- 1.The Secretary of State,
Prohibition and Excise Department,
St. George Fort, Chennai - 600 009
- 2.The Commissioner of Police,
Greater Chennai, Poonamallee High Road,
Vepery, Chennai - 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public(law and order)
Fort. St. George
Chennai 9.

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CA(CO)
SP(23/10/2019)