

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019
CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M. NIRMAL KUMAR

H.C.P. No. 1360 of 2019

K.Shanthi

... Petitioner

-Vs-

1.The State of Tamil Nadu

Rep. by its Secretary to Government, (Home)
Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009

2.The District Collector and District Magistrate
Cuddalore, Cuddalore District

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records relating to the impugned order of Detention passed by the second respondent in C3/D.O/47/2019 dated 26.06.2019 and set aside the same and consequently direct the respondents to produce the detenu Karthikeyan @ Karthi, son of Baskaran, aged about 37 years, Petitioner's Husband now confined at Central Prison, Cuddalore, before this court and set him at liberty forthwith.

For Petitioner : Mr.S.Saravanakumar

For Respondents : Mr.C.Iyyappa Raj
Addl. Public Prosecutor

ORDER

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

The matter has been taken at the instance of the Petitioner since the detenu is continuously precarious.

2. The learned Additional Public Prosecutor stated that condition of the detenu is not good. Hence, this court is inclined to take up the matter today and the following order is passed.

3. The petitioner is the wife of the detenu and challenge is made to the order of detention dated 26.06.2019 made in No.C3/D.O./47/2019, passed by the second respondent under which the detenu has been branded as a 'Goonda' and detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Slum-Grabbers and Video Pirates Act, 1982 (hereinafter referred to as Tamil Nadu Act 14 of 1982).

4. 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.

5. 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 adverse case and 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.

6. 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 Karthikeyan @ Karthi, S/o.Baskaran has been remanded in judicial custody upto 08.07.2019 and lodged at Central Prison, Cuddalore, in connection with Panruti Police Station Cr.No.338/2018 u/s.341, 294(b), 323, 324, 307 and 363 IPC. I am aware that he has already filed a bail application before the Court of District Vacation Sessions Judge, Cuddalore, on 14.05.2019 and the same was dismissed on 16.05.2019 in Crl.M.P.No.2973/2019 further he had again filed another bail application before the same court on 21.05.2019 in Crl.M.P.No.3090/2019 and the same was dismissed on 23.05.2019. Again he filed another bail application before the Hon'ble High Court, Madras, on 03.06.2019 in Crl.O.P.No.14301/2019 and same is pending. In a similar case in Thirupapuliyur Police Station Cr.No.218/2019 under section 294(b), 323, 324, 353, 332, 307 and 506(ii) IPC bail was granted to the accused (Kanniyappan, S/o.Thanikachalam) by the Court of District Sessions Judge, Cuddalore, in Crl.M.P.No.2980/2019 on 16.05.2019 (copy enclosed). Hence, I infer that there is likelihood of his (Thiru.Karthikeyan @ Karthi) coming out on bail in Panruti Police Station Cr.No.338/2019 since bail is

granted by courts in such cases. If he comes out on bail, he will indulge in future activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order. On the materials placed before me, and after careful perusal of records and his antecedents, I am satisfied that the said Thiru.Karthikeyan @ Karthi, S/o.Baskaran is a Goonda as per Sec.2(f) of Tamil Nadu Act 14/1982 and there is compelling necessity to detain him in order to prevent him from indulging in acts which are prejudicial to the maintenance of public order under the provisions of Tamil Nadu Act 14 of 1982. "

7. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Thirupapuliyur Police Station Crime No.218 of 2019 under Section 294(b), 323, 324, 353, 332, 307 and 506(ii) IPC and bail was granted to the accused in that case in CrI.M.P.No.2980/2019 on 16.05.2019 by the District Sessions Judge, Cuddalore, 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 294(b), 323, 324, 353, 332, 307 and 506(ii) IPC, whereas the offences involved in the ground case are under Sections 341, 294(b), 323, 324, 307 and 363 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.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.C3/D.O./47/2019 dated 26.06.2019, passed by the second respondent is set aside. The detenu, namely, Karthikeyan @ Karthi, S/o.Baskaran, aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

nvsri

Sd/-

Assistant Registrar

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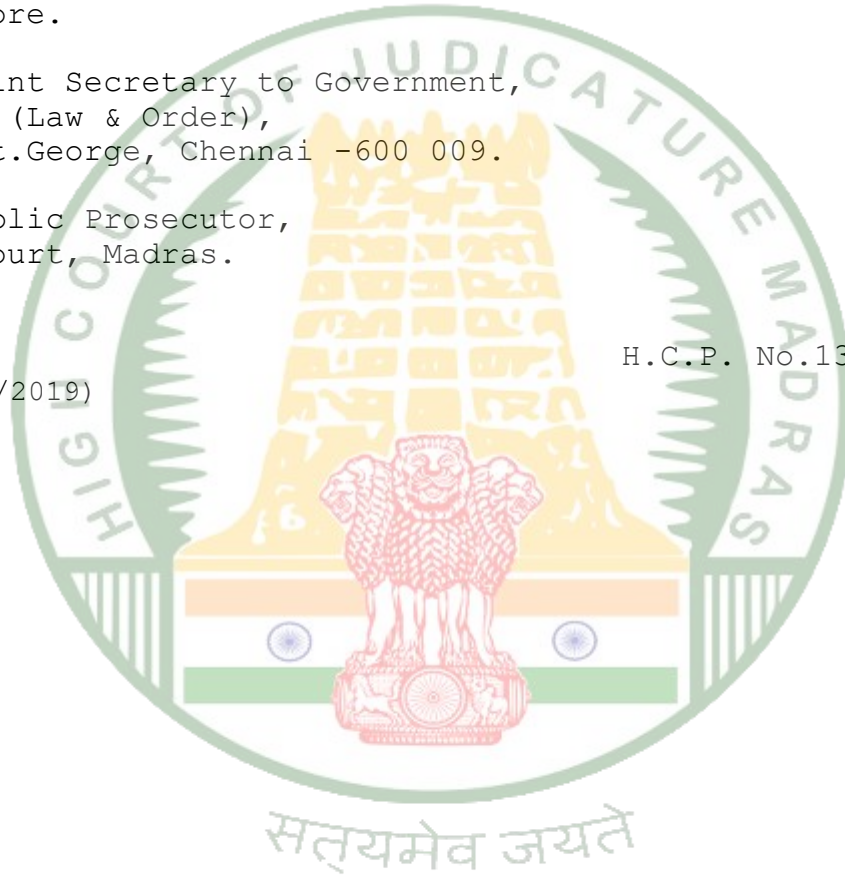
Sub Assistant Registrar

To

- 1.The Secretary to Government, (Home)
Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009
- 2.The District Collector and District Magistrate
Cuddalore, Cuddalore District
- 3.The Superintendent of Central Prison,
Cuddalore.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.
5. The Public Prosecutor,
High Court, Madras.

Kak(01/11/2019)

H.C.P. No.1360 of 2019



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