IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

Coram

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

H.C.P. No.1421 of 2019

Sumathi ... Petitioner

-vs-

State rep. by

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 9.

2.The District Magistrate and
District Collector,
Salem District, Salem. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in C.M.P.No.25/Goonda/C2/2019 dated 20.06.2019 on the file of the District Magistrate and District Collector, Salem District, Salem, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu Thiru Rubber @ Jayaprakash, S/o.Balasubramani, aged about 24 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

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For Petitioner : Mr.S.Rajanikanth

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

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ORDER

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

The petitioner is the mother of the detenu Rubber @ Jayaprakash, S/o.Balasubramani, aged about 24 years. The detenu has been detained by the second respondent by his order in C.M.P.No.25/Goonda/C2/2019 dated 20.06.2019, 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 also aware that Thiru Rubber @ Jayaprakash is in remand in Attaiyampatti Police Station Crime No.118/2019 for offences under Sections 341, 294(b), 392 r/w 397, 506(ii) IPC has not filed any bail petition so far. In similar case registered at Hasthampatty Police Station Crime No.278/2018, U/s.392, 397 and 506 (ii) IPC, bail was granted to the accused Thiru.Viji by the Principal Sessions Judge, Salem in C.M.P.no.2886/2018 on 05.09.2018. Hence, there is a real possibility of his (Thiru Rubber @ Jayaprakash) coming out on bail by filing a bail application for the above case before the appropriate Court. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order....."

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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 Hasthampatty Police Station Crime No.278/2018, U/s.392, 397 and 506(ii) IPC, bail was granted to the accused Thiru.Viji by the Principal Sessions Judge, Salem in C.M.P.no.2886/2018 on 05.09.2018 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 392, 397 and 506(ii) IPC whereas the offences involved in the ground case are u/s 341, 294 (b), 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 C.M.P.No.25/Goonda/C2/2019 dated 20.06.2019, passed by the second respondent is set aside. The detenu, namely, Rubber @ Jayaprakash, S/o.Balasubramani, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi/ssm
To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 9.

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

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3.The Superintendent of Prison,
Central Prison, Salem.

4.The Joint Secretary to Government,
Public (Law and order),
Fort.St.George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1421 of 2019

A.SK(07/11/2019)

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