

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

H.C.P.NO.1461 OF 2019

Krishnan

... Petitioner/
Father of the Detenu

-vs-

1. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
2. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the first respondent herein concerned in order BCDFGISSSV No.41 of 2019, dated 06.06.2019 and produce the detenu namely Venkatesan, S/o. Krishnan, aged about 21 years, now detained in Central Prison, Puzhal, Chennai - 66 and set him at liberty.

For Petitioner : Mr.E.Nagaraj

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 Venkatesan, S/o. Krishnan, male, aged about 21 years. The detenu has been detained by the first respondent by his order in BCDFGISSSV No.41 of 2019, dated 06.06.2019, 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 also perused the records produced by the Detaining Authority.

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 5 of the grounds of detention are extracted below:

"5. I am aware that accused Thiru. Venkatesan S/o. Krishnan was arrested in Sriperumbudur Police Station Cr.No.252/2019 on 30.04.2019 produced before the Court of District Munsif cum Judicial Magistrate, Sriperumbudur on the same day remanded under judicial custody upto 14.05.2019 and lodged at Central Prison, Puzhal, Chennai -66 as a remanded prisoner. His remand period was periodically extended upto 11.06.2019 meanwhile the father of the accused Thiru. Krishnan S/o. Munusamy has given a statement u/s 161 (3) Cr.P.C. on 30.05.2019 that due to their family financial circumstances they are not in a position to file a bail petition in the above case on behalf of his son and in due course of time he will try to file a bail petition before any appropriate court after making consultation with his counsel. In these circumstances, if he will be released on bail again he will indulge in the activities prejudicial to the maintenance of public peace and public order. However, in similar nature of offence this accused was released on bail by filing a bail petition through proper Court. i.e., In Vishnu Kanchi Police Station Cr.No.1179/2015 u/s 147,148,302 IPC similar accused Thiru. Balaji and Thiru. Suresh were released on bail through District and Sessions Court - II, Kancheepuram in C.M.P. No.1933 of 2015 dt 21.12.2015. In the same way, there is real possibility for him being released on bail in the above ground case also....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Cr.No.1179/2015 under Sections 147, 148 and 302 IPC, bail was granted by the District and Sessions Court - II, Kancheepuram in C.M.P. No.1933 of 2015 dated 21.12.2015

and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.252/2019 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 147, 148 and 302 IPC whereas the offences involved in the ground case are under Sections 363 and 302 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 BCDFGISSSV No.41 of 2019, dated 06.06.2019, passed by the first respondent is set aside. The detenu, namely, Venkatesan, S/o. Krishnan, male, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
2. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law & Order), Fort St. George.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1461 of 2019

VGI (CO)
CS/29/11/2019