

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

Coram

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

H.C.P. No.1479 of 2019

Manickavel

... Petitioner

-vs-

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

2.District Collector and District Magistrate,
Vellore District, Vellore. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 08.07.2019 in Memo No.C3/D.O.No.66/2019 against the petitioner's son Divakar, male, aged 23 years, S/o.Manickavel, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 Divakar, aged 23 years, S/o.Manickavel,. The detenu has been detained by the second respondent by his order in C3/D.O.No.66/2019 dated 08.07.2019, holding to be a "Sand Offender", as contemplated under Section 2(gg) 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Divakar was produced before the Judicial Magistrate No.II, Walajapet on 16.06.2019 in the ground case in Walajapet Police Station Crime No.366/2019 u/s.379, 430, 353, 307 I.P.C. r/w Section 21(5) Mines and Minerals (Development and Regulation) Act, 1957 and was remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 28.06.2019. Further, remand was extended upto 12.07.2019.

I am aware that Thiru.Divakar has filed a bail application before the court of Principal Sessions Judge, Vellore in ground case in Walajapet Police Station Crime No.366/2019 u/s. 379, 430, 353, 307 IPC r/w Section 21(5) Mines and Minerals (Development and Regulation) Act, 1957 in CrI.M.P.No.3461/2019 and the same was pending. As far as the ground case concerned, in a similar case registered at Sipcot Police Station Crime No.222/2017, u/s.379, 430, 341, 353, 307 IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 bail was granted to the accused Thiru.Vasu by the Court of the Principal Sessions Judge, Vellore in CrI.M.P.No.2854/2017 on 27.07.2017. As bails are being granted by courts in such cases, there is real possibility that he (Thiru.Divakar) coming out of bail, by above pending bail application before the Court. If he enlarge himself on bail, he would 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 Sipcot Police Station Crime No.222/2017 u/s.379, 430, 341, 353, 307 IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 bail was granted to the accused Thiru.Vasu by the Court of the Principal Sessions Judge, Vellore in Crl.M.P.No.2854/2017 on 27.07.2017 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 379, 430, 341, 353, 307 IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 whereas the offences involved in the ground case are under Sections 379, 430, 353, 307 IPC r/w Section 21(5) Mines and Minerals (Development and Regulation) Act, 1957. 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 C3/D.O.No.66/2019 dated 08.07.2019, passed by the second respondent is set aside. The detenu, namely, Divakar, aged 23 years, S/o.Manickavel, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mmi/ssm
To

- 1.The Secretary to Government,
Home, Prohibition and Excise
Department, Secretariat,
Chennai - 9.
- 2.The District Collector and District Magistrate,
Vellore District, Vellore.
- 3.The Superintendent of Prison,
Central Prison,Vellore.
- 4.The Joint Secretary to Government,
Public (Law & Order) Fort St.George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1479 of 2019

SPD (CO)
CB (02/12/2019)



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