

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

Coram

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

H.C.P. No.1475 of 2019

P.Kala

... Petitioner

-vs-

1. The Commissioner of Police,
Gretare Chennai Police,
Vepery, Chennai.

2. State by
The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009. ... 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 in connection with detention order No. 191/BCDFGISSSV/2019 dated 03.05.2019 and quash the same and to produce the body of the detenu Prasanth, S/o. Prakash before this Court and set at liberty the detenu Prasanth, S/o. Prakash now detained in the Central Prison-II, Puzhal, Chennai under Act 14/1982.

For Petitioner : Mr.A.Ashwinkumar

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 mother of the detenu Prasanth, S/o. Prakash, Hindu, aged about 27 years. The detenu has been detained by the first respondent by his order in 191/BCDFGISSSV/2019 dated 03.05.2019, 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 second 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.

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. Prasanth is in remand in J-5 Shastri Nagar Police Station Crime Nos. 257/2019 and 260/2019 and he has moved a bail application for J-5 Shastri Nagar Police Station Crime No.257/2019 before the Court of Principal Sessions Judge, Chennai in CrI.M.P.No. 8040/2019 and the same was dismissed. he has moved a bail application for J-5 Shastri Nagar Police Station Crime No.260/2019 before the Court of IX Metropolitan Magistrate, Saidapet, Chennai - 15, in CrI.M.P.No.405/2019 and the same is pending. The sponsoring authority has stated that Thiru.Prasanth's relatives are taking action to take him out on bail in J-5 Shastri Nagar Police Station Crime No.257/2019 by filing another bail application before the appropriate Court. In the similar case registered at R1 Mambalam Police Station Cr.No.325/2018 under Sections 341, 294(b), 324, 327 and 506(ii) IPC bail was granted by the Court of Principal Sessions, Chennai in CrI MP No. 8238/2018. In the similar case registered at R-2 Kodambakkam Police Station Cr.No.1348/2017 under Sections 341, 294 (b), 324, 392, and 506(ii) IPC bail was granted by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.No. 103/2018. Hence, I infer that it is very likely of his coming out on bail in J-5 Shastri Nagar Police Station Crime No.260/2019 and there is real possibility of his coming out on bail in J-5 Shastri Nagar Police Station Crime No. 257/2019 by filing another bail application before the appropriate court, since in similarly placed case bail is granted by courts after a lapse of time. If he comes If he enlarge himself on bail, he would indulge in further activities which will be prejudicial to the

maintenance of public order and public peace."

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 R1 Mambalam Police Station Cr.No.325/2018 under Sections 341, 294(b), 324, 327 and 506(ii) IPC bail was granted by the Court of Principal Sessions, Chennai in Cr1 MP No. 8238/2018 and in the similar case registered at R-2 Kodambakkam Police Station Cr.No1348/2017 under Sections 341, 294(b), 324, 392, and 506(ii) IPC bail was granted by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai in Cr1.M.P.No. 103/2018 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 cases relied on by the authority was registered for the offences under Sections 341, 294(b), 324, 327 and 506(ii) IPC and 341, 294(b), 324, 392, and 506(ii) IPC whereas the offences involved in the second adverse case and ground case are under Sections 341, 294(b), 307, 506(ii) IPC and 341, 294(b), 427, 336, 392 and 506(ii) IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar cases 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 No.191/BCDFGISSSV/2019 dated 03.05.2019, passed by the first respondent is set aside. The detenu, namely, Prasanth, S/o. Prakash, Hindu, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

mmi/ssm

To

1. The Commissioner of Police,
Gretare Chennai Police,
Vepery, Chennai.
2. The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

3. The Superintendent,
Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government,
Public (Law & Order),
Fort. St George, Chennai - 9.

5. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.A.Ashwin Kumar, Advocate, S.R.No.81711

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KK(CO)
SSM(04/11/2019)



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