

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

Coram

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

H.C.P. No. 1570 of 2019

Sabaritha

... Petitioner

-vs-

1.State of Tamil Nadu

Rep. by The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George, Chennai - 9.

2.The Commissioner of Police,

Greater Chennai,

Office of Commissioner of Police,

Vepery, Chennai - 7.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in No.359/BCDFGISSSV/2019 dated 26.06.2019 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Pasupathy, Son of Palani, aged about 25 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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 wife of the detenu Pasupathy, Son of Palani, male, aged about 25 years. The detenu has been detained by the second respondent by his order in No.359/BCDFGISSSV/2019 dated 26.06.2019, 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 3 of the grounds of detention are extracted below:

"3. I am aware that Thiru Pasupathy is in remand in H6 R.K.Nagar Police Station Cr.No.541/2019 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for H6 R.K.Nagar Police Station Cr.No.541/2019. The sponsoring authority has stated that the relatives of Thiru Pasupathy are taking action to take him out on bail in H6 R.K.Nagar Police Station Cr.No.541/2019 by filing bail application before the appropriate Court. In a similar case registered u/s 341, 302 IPC in C3 Manimangalam Police Station Cr.No.75/2016 bail was granted by the Principal Sessions Court, Kancheepuram District, Chengalpattu in CrI.M.P.No.728/2016. Hence, I infer that there is real possibility of his coming out on bail in H6 R.K.Nagar Police Station Cr.No.541/2016 by filing bail application before the appropriate court, since in similar case bail is granted by the court after a lapse of time. If he comes out on bail, he will 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 the similar case registered u/s 341, 302 IPC in C3 Manimangalam Police Station Cr.No.75/2016 bail was granted by the Principal Sessions Court, Kancheepuram District, Chengalpattu in CrI.M.P.No.728/2016, and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No 541/2019 case 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 341 and 302 IPC whereas the offences involved in the ground case are under Section 302 IPC subsequently altered into Sections 147,

148, 341, 120(B), 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 Memo No.359/BCDFGISSSV/2019 dated 26.06.2019, passed by the second respondent is set aside. The detenu, namely, Pasupathy, Son of Palani, male, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery,Chennai - 7.
- 3.The Superintendent,
Central Prison,Puzhal,Chennai.
4. The Joint Secretary to Government,
Public (law & Order)
Fort Saint George, Chennai 9
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1570 of 2019

SPD (CO)

GN(28/11/2019)