

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

Coram

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

H.C.P. No. 1587 of 2019

Duraisamy

... Petitioner

-vs-

1.The State of Tamilnadu  
Rep. by its Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George,Chennai - 9.

2.The District Collector & District Magistrate,  
Thiruvannamalai District,  
Thiruvannamalai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the detention made in D.O.no.54/2019-C2 dated 05.07.2019 passed by the District Collector and District Magistrate, Thiruvannamalai District, Thiruvannamalai the second respondent herein and set aside the same and direct the respondents to produce the detainee before this Court and set the detainee Manokari, Wife of Duraisamy, aged 43 years, now confined in Special Prison for Women, Vellore at liberty.

For Petitioner : Mr.R.Balakrishnan

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 husband of the detainee Manokari, Wife of Duraisamy, female, aged 43 years. The detainee has been detained by the second respondent by his order in

D.O.No.54/2019-C2 dated 05.07.2019, holding to be a "Bootlegger", 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 Tmt. Manokari is remanded in Special Prison for Women, Vellore in the ground case in Tiruvannamalai Prohibition Enforcement Wing Cr.No.646/2019 and I am aware that a bail petition has been filed on behalf of the accused Tmt.Manokari before District and Sessions Court, Tiruvannamalai in Cr.M.P.No.2972/2019, dated 01.07.2019 and it is ordered to be called on 09.7.2019. further a bail petition has been filed on behalf of the co-accused Tmt.Kannammal before District and Sessions Court, Tiruvannamalai in Cr.M.P.No.2971/2019, dated 01.07.2019 and it is ordered to be called on 09.07.2019. Further an anticipatory bail petition has been filed on behalf of the co-accused Thiru. Venkatesan before Hon'ble High Court Chennai in CrI.O.P.No.16773/2019 dated 27.06.2019 and it is pending in the above court. Further the accused Manokari in her previous cases in Prohibition Enforcement Wing, Tiruvannamalai Cr.Nos. 887/2018 and 391/2018, she was granted bail by the orders of District and Sessions Court, Tiruvannamalai in Cr.M.P.Nos 3583/2018 dated 03.09.2018 and 1499/2019 dated 16.04.2019 respectively. I am aware that in a similar case registered in Tiruvannamalai Prohibition Enforcement Wing, Cr.No.376/2015 under Section 4(1)(i) r/w 4(1-A) TNP Act, 1937 @ 4(1)(i), 4(1)(aaa) r/w 4(1-A) (ii) TNP Act against Bharathi, W/o. Elumalai, was granted bail by the orders of the District Sessions Court, Tiruvannamalai in CrI.M.P.No.2206/2015, dated

03.07.2015. Hence, I infer that there is real possibility of her coming out on bail in the above bail application in the above court, since bails are granted by the Courts in such case. If she comes out on bail, she will indulge in such 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 in Tiruvannamalai Prohibition Enforcement Wing, Cr.No.376/2015 under Section 4(1)(i) r/w 4(1-A) TNP Act, 1937 @ 4(1)(i), 4(1)(aaa) r/w 4(1-A) (ii) TNP Act against Bharathi, W/o. Elumalai, was granted bail by the orders of the District Sessions Court, Tiruvannamalai in CrI.M.P.No.2206/2015, dated 03.07.2015, and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No 376/2019 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 4(1)(i) r/w 4(1-A) TNP Act, 1937 @ 4(1)(i), 4(1)(aaa) r/w 4(1-A) (ii) TNP Act whereas the offences involved in the ground case are under Section 4(1)(aaa) r/w 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 and Rules 6 and 7 of R.S. Rules, 2000. 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 D.O.No.54/2019-C2 dated 05.07.2019, passed by the second respondent is set aside. The detenu, Manokari, Wife of Duraisamy, female, aged 43 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-

सत्यमेव जयते Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi/ssm  
To

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

3.The Superintendent,  
Special Prison for Women,Vellore.

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. 1587 of 2019

A.SK(02/12/2019)



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