

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

Coram

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

H.C.P. No. 1607 of 2019

Dhanalakshmi

... Petitioner

-vs-

1.The State of Tamil Nadu  
Rep. by its Secretary to Government,  
Department of Prohibition and Excise(Home),  
Fort St.George,  
Chennai - 600 009.

2.The Commissioner of Police,  
Chennai City Police, Greater Chennai,  
Commissioner Office, Vepery,  
Chennai - 600 007. ... 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.411/BCDFGISSSV/2019 dated 15.07.2019 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Nagamani, son of Solai, aged about 40 years, who is confined at Central Prison, Puazhal, 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 seeking to challenge the Detention Order dated 15.07.2019 on the ground of non-application of mind, non-consideration of the materials available and consideration of the materials not germane.

2. The learned counsel appearing for the petitioner submitted that the remand order furnished in the booklet has not been translated in the vernacular language correctly. Reliance has been made on Page No.729 of the booklet. It is his further submission that for the adverse cases 2,3,6,7 and 8, no particulars of the similar cases have been furnished to satisfy that the detenu is likely to be enlarged on bail. Even, in these cases also, no application has been filed seeking bail. The learned counsel for the petitioner is that the similar case relied upon in the ground case is not similar. The ground case has been registered against the detenu in Cr.No.490 of 2019 under Sections 341, 204(b), 392, 397, 336 and 506(ii) IPC whereas the similar case relied upon was for the offence under Sections 336,399,397,392,427,506(ii) IPC. In the case on hand, the previous cases in which the detenu is involved are more as against the aforesaid case relied upon. Therefore, there appears to be non-application of mind in passing the Detention Order by the Detaining Authority.

3. The learned Additional Public Prosecutor appearing for the State would submit that on the question of reason to believe with respect to the subjective satisfaction, the Hon'ble Supreme Court in Union of India and others vs. Dimple Happy Dhakad reported in [ 2019(3) MLJ (Cr1) 617] was pleased to hold as follows:-

"35. In the light of the well settled principles, we have to see, in the present case, whether there was awareness in the mind of the detaining authority that detenu is in custody and he had reason to believe that detenu is likely to be released on bail and if so released, he would continue to indulge in prejudicial activities. In the present case, the detention orders dated 17.05.2019 record the awareness of the detaining authority :- (i) that the detenu is in custody; (ii) that the bail application filed by the detenues have been rejected by the Court. Of course, in the detention orders, the detaining authority has not specifically recorded that the "detenu is likely to be released". It cannot be said that the detaining authority has not applied

its mind merely on the ground that in the detention orders, it is not expressly stated as to the "detenue's likelihood of being released on bail" and "if so released, he is likely to indulge in the same prejudicial activities". But the detaining authority has clearly recorded the antecedent of the detenues and its satisfaction that detenues Happy Dhakad and Nisar Aliyar have the high propensity to commit such offences in future."

4. Insofar as the other contentions are concerned, it is submitted that the procedural irregularities would not vitiate the Detention Order. The detenu has involved in scores of similar cases running more than hundred. In such view of the matter, the petition will have to be dismissed.

5. We are concerned with the validity of the Detention Order passed. Therefore, the involvement of the detenu in the previous cases will not have any bearing. On a perusal of the documents, we are satisfied that the translation has not been correctly done as seen from Page No.729 of the booklet furnished. This is with respect to the remand order. Secondly, for the adverse cases 2,3,6,7 and 8, no particulars have been given. In these cases, the detenu has not even filed any bail application. Therefore, for arriving at a satisfaction, there must be some material that in similar case, bail has been granted particularly when the Detention Order has been based on that ground also.

6. On the third submission made, we are inclined to concur with the learned counsel appearing for the petitioner. The ground case is with respect to Cr.No.490 of 2019 for the offence under Sections 341, 204(b), 392, 397, 336 and 506(ii) IPC whereas the similar case relied upon involves some other offence though the offence mentioned in the ground case are also mentioned there under. Suffice it to state that it is not the similar case as involved in the ground case. Further more, the detenu is involved in more previous cases than the accused in the similar case. In such view of the matter, we are of the view that the Detention Order is liable to be set aside for non-application of mind.

7. Accordingly, the detention order is set aside and the Habeas Corpus Petition stands allowed and the order of detention in No.411/BCDFGISSSV/2019 dated 15.07.2019, passed by the second respondent is set aside. The detenu, namely, Nagamani, son of Solai, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

8. We make it clear that the order passed by us will not have any bearing on the bail application to be filed in the pending cases.

Sd/-  
Assistant Registrar(CS- )

// True Copy//

Sub Assistant Registrar

ssm

To

- 1.The Secretary to Government,  
Department of Prohibition and Excise(Home),  
Fort St.George,  
Chennai - 600 009.
- 2.The Commissioner of Police,  
Chennai City Police,Greater Chennai,  
Commissioner Office, Vepery,  
Chennai - 600 007.
- 3.The Superintendent,  
Central Prison, Puzhal,  
Chennai.
- 4.The Public Prosecutor,  
High Court, Madras.

H.C.P. No. 1607 of 2019

RR (CO)  
CSR(09/12/2019)

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