

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

Coram

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

H.C.P. No. 1641 of 2019

Thirumathi

... Petitioner

-vs-

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the detention order No.C3/D.O/50/2019 dated 06.07.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband namely, Suresh, Male, aged about 48 years, S/o.Panneerselvam, the detenu now confined at Central Prison, Cuddalore before this Court and set the petitioner's husband Suresh, S/o.Paneerselvam, male, aged about 48 years at liberty.

For Petitioner : Mr.M.Selvam

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 Suresh, S/o.Paneerselvam, male, aged about 48 years. The detenu has been detained by the second respondent by his order in No.C3/D.O/50/2019 dated 06.07.2019, 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 offence 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 Suresh, S/o. Panneerselvam has been remanded in Judicial custody upto 17.07.2019 and lodged at Central Prison, Cuddalore in connection with Vridhachalam P.S.Cr.No.290/2019 under Section 379 IPC @ 392 and 397 IPC. I am aware that he has already filed a bail application before the Court of District Sessions Judge, Cuddalore on 11.06.2019 in CrI.M.P.No.3544/2019 and the same was dismissed on 24.06.2019. In a similar case in Cuddalore O.T.P.S.Cr.No.22/2019 Sec. 397, 353 IPC bail was granted to the accused (Sathishkumar) by the Court of District Sessions, Cuddalore in CrI.M.P.No.1232/2019 on 22.02.2019. Hence, I infer that there is likelihood of his (Thiru. Suresh, S/o. Panneerselvam) coming out on bail in Vridhachalam P.S.Cr.No.290/2019, by filing another bail application for the above case before the concerned court, since bail is granted by courts in such cases. If he comes out on bail, he will indulge in future 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 in Cuddalore O.T.P.S.Cr.No.22/2019 for the offence under Sections 397, 353 IPC and bail was granted to the accused (Sathishkumar) by the Court of District Sessions, Cuddalore in CrI.M.P.No.1232/2019 on 22.02.2019 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No 290/2019 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 397 and 353 IPC whereas the offences involved in the ground case are under Section 379 IPC @ 392 and 397 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 No.C3/D.O/50/2019 dated 06.07.2019, passed by the second respondent is set aside. The detenu, namely, Suresh, S/o.Paneerselvam, male, aged about 48 years, 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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District.
- 3.The Superintendent of Prison,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public (Law & Order)
Fort St George, Chennai-9

H.C.P. No. 1641 of 2019

NRL (CO)
GMY (27/11/2019)