

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mrs. Justice R. HEMALATHA

H.C.P. No. 1621 of 2019

Nirmala

... Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
of Vellore, Vellore District. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 14.07.2019 in his office Ref.C3.D.O.No.75/2019 against the petitioner's son by name Thiru. Prabhakaran, S/o. Boopathi, aged about 21 years, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan

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 Prabhakaran, S/o. Boopathi, male, aged about 21 years. The detenu has been detained by the second respondent by his order in Ref.C3.D.O.No.75/2019 dated 14.07.2019, 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 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 Thiru Prabhakaran was produced before the Judicial Magistrate, Vaniyambadi on 15.06.2019 in the ground case in Vaniyambadi Taluk Police Station Crime No.293/2019 u/s 341,302,506(ii) IPC and remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 28.06.2019. Further, his remand was extended upto 02.07.2019 and then upto 17.07.2019.

I am aware that Thiru. Prabhakaran has filed a bail application in ground case Vaniyambadi Taluk Police Station Crime No.293/2019 u/s 341,302, 506(ii) IPC before the Court of Principal Sessions Judge, Vellore in Crl.M.P.No.3423/2019 and the same is pending before the Court. As far as the ground case is concerned, in a similar case registered at Kanchi Taluk Police Station Crime No.15/2016, under Section 147,148,506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109,114 IPC bail was granted to the accused Tvl.K.Sandhar, S/o. Kuppan, and Moses, S/o. Joseph by the Court of Hon'ble Sessions Court II, Kanchipuram, in Crl.M.P.No.600/2016 on 06.04.2016. As

bails are being granted by courts in such cases, there is a real possibility of his (Thiru. Prabhakaran) coming out on bail, in the above pending bail application before the court. If he enlarged 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 the similar case registered at Kanchi Taluk Police Station Crime No.15/2016, under Sections 147,148,506(ii), 302 IPC @ 120B, 147, 148, 506 (ii), 302 IPC and 149, 109,114 IPC bail was granted to the accused Tvl.K.Sandhar, S/o. Kuppan, and Moses, S/o. Joseph by the Court of Hon'ble Sessions Court II, Kanchipuram, in CrI.M.P.No.600/2016 on 06.04.2016, and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No 293/2019 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 147,148,506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149,109,114 IPC whereas the offences involved in the ground case are u/s 341,302,506(ii) 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 Ref.C3.D.O.No.75/2019 dated 14.07.2019, passed by the second respondent is set aside. The detenu, namely, Prabhakaran, S/o. Boopathi, male, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

सत्यमेव जयते Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Secretariat, Chennai - 9.

2.The District Collector and District Magistrate,
of Vellore, Vellore District.

3.The Superintendent,
Central Prison, Vellore.

4.The Public Prosecutor,
High Court, Madras.

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

H.C.P. No. 1621 of 2019

RR(CO)
GMY(04/12/2019)



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