

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. 1626 of 2019

Bavani

... Petitioner

-vs-

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

2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in BCDFGISSSV No.49/2019 dated 17.07.2019 in detain the detenu under 2 (b) of Tamilnadu Act 14 of 1982, as a Sand Offender and quash the same and direct the respondents to produce the detenu Senthil, son of Munusamy, aged about 35 years, who is detained at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan

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, Senthil, son of Munusamy, male, aged about 35 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV

No.49/2019 dated 17.07.2019, holding to be a "Sand Offender", as contemplated under Section 2(gg) 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 Senthil S/o Munusamy was arrested in Salavakkam PS Cr. No.220/2019 on 07.07.2019 produced before the District Munsif cum Judicial Magistrate, Uthiramerur on 08.07.2019 ordered to be remanded under Judicial custody upto 22.07.2019 and lodged at District Jail, Chengalpattu as a remand prisoner. Meanwhile the wife of the accused Tmt. Bhavani has given a statement u/s 161(3) Cr.P.C. On 15.07.2019 that due to their family circumstances they are not in a position to file a bail petition in the above case on behalf of her husband and in due course of time she will try to file a bail petition before any appropriate court after making consideration with her counsel. In this circumstances, if he will be released on bail again he will indulge in activities prejudicial to the maintenance of public peace and public order. However, in similar nature of the offence the similar accused had released on bail by filing a bail petition through proper court ie., In Chengalpattu Taluk PS Cr.No.510/2014 u/s 294(b), 353, 506(ii), 307, 430, 379 r/w 3(1) of Tamil nadu Property (Prevention of Damage & Loss) Act, 1992 r/w 21(1) Mines & Minerals Act accused Thiru. Rajesh @ Anil Rajesh S/o Anbu was released on bail in CrI.M.P.No.3143/2014 by the Principal District and Sessions Court, Chengalpattu on 28.10.2014."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar

case registered at Chengalpattu Taluk PS Cr.No.510/2014 u/s 294 (b), 353, 506(ii), 307, 430, 379 r/w 3(1) of Tamil nadu Property (Prevention of Damage & Loss) Act, 1992 r/w 21(1) Mines & Minerals Act accused Thiru. Rajesh @ Anil Rajesh S/o Anbu was released on bail in Crl.M.P.No.3143/2014 by the Principal District and Sessions Court, Chengalpattu on 28.10.2014, 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 294(b), 353, 506(ii), 307, 430, 379 r/w 3(1) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 r/w 21(1) Mines & Minerals Act whereas the offences involved in the ground case are under Sections 294 (b), 353, 307, 506(ii), 430, 379 IPC r/w 21(1) of Mines and Minerals Act, 1957. 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 BCDFGISSSV No.49/2019 dated 17.07.2019, passed by the second respondent is set aside. The detenu, namely, Senthil, son of Munusamy, male, aged about 35 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

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 and District Magistrate,
Kancheepuram District,
Kancheepuram.
 - 3.The Superintendent,Central Prison,Vellore.
 - 4.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
 - 5.The Public Prosecutor,High Court, Madras.
- A.SK(28/11/2019)

H.C.P. No. 1626 of 2019