

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

Coram

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

H.C.P. No. 1678 of 2019

D.Valarmathi

... Petitioner

-vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The District Collector cum District Magistrate,
Vellore,
Vellore District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 31.07.2019 on the file of the second respondent herein made in proceedings C3/D.O.No.89/2019, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Dinesh, S/o. Gajendiran, aged 25 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Vellore.

For Petitioner : Mr.R.Sasikumar

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, Dinesh, S/o. Gajendiran, male, aged 25 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.89/2019, dated 31.07.2019, 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 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 Dinesh was produced before the Judicial Magistrate, Arakkonam on 12.07.2019 in the ground case in Arakkonam Taluk Police Station Crime No.324/2019 u/s 379, 430, 294(b), 353, 307, 506(ii) IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act 1957 and was remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 26.07.2019. Further remand was extended upto 09.08.2019.

I am aware that Thiru. Dinesh has filed a bail application before the court of Principal Sessions Judge, Vellore in ground case in Arakkonam Taluk Police Station Crime No.324/2019 u/s 379, 430, 294(b), 353, 307, 506(ii) IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act 1957 in CrI.M.P.No.3645/2019 and the same was pending. As far as the ground case is concerned in a similar case registered at Sipcot Police Station Crime No. 222/2017 u/s 379, 430, 341, 353, 307 IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act 1957 bail was granted to the accused Thiru. Vasu by the Court of the Principal Sessions Judge, Vellore in CrI.M.P.No.2854/2017 on 27.07.2019. As bails are being granted by courts in such cases, there is real possibility that he (Thiru.Dinesh) coming out of bail, by above pending bail application before the Court. If he enlarges himself on bail, he would indulge in 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 the similar case registered at Sipcot Police Station Crime No. 222/2017 u/s 379, 430, 341, 353, 307 IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act 1957 bail was granted to the accused Thiru. Vasu by the Court of the Principal Sessions Judge, Vellore in CrI.M.P.No.2854/2017 on 27.07.2019 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.324/2019 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 u/s 379, 430, 341, 353, 307 IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) Act 1957 whereas the offences involved in the ground case are u/s 379, 430, 294 (b), 353, 307, 506(ii) IPC r/w Section 21(1) Mines and Minerals (Development and Regulation) 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 C3/D.O.No.89/2019, dated 31.07.2019, passed by the second respondent is set aside. The detenu, namely, Dinesh, S/o. Gajendiran, male, aged 25 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 Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The District Collector cum District Magistrate,
Vellore, Vellore District.

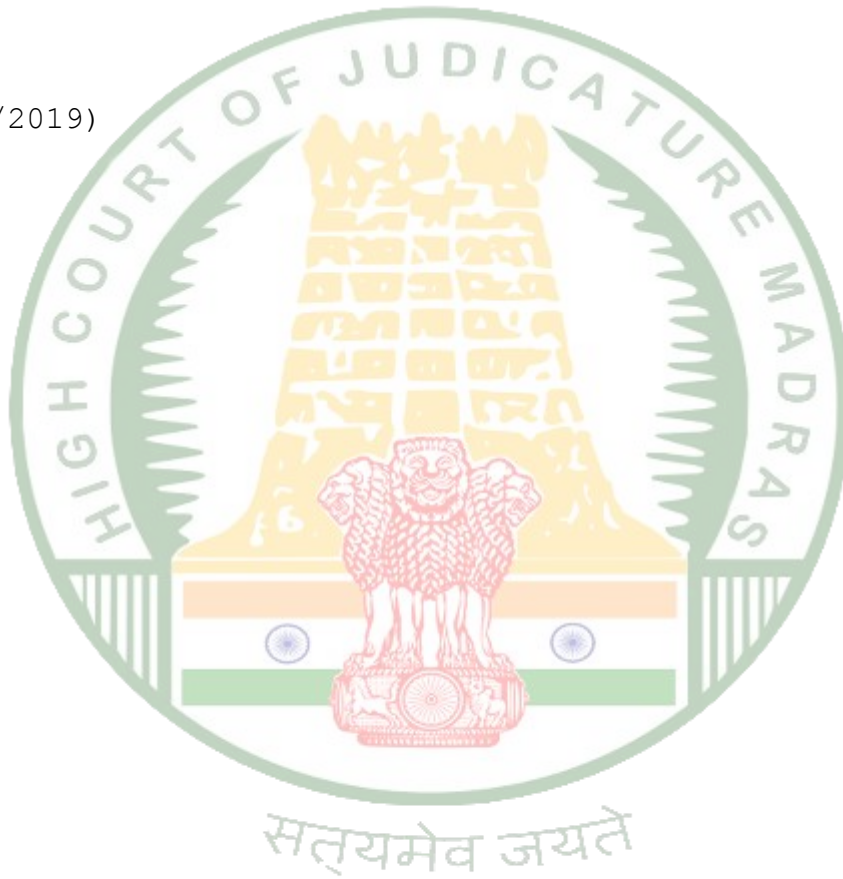
3.The Superintendent,
Central Prison,Vellore.

4.The Public Prosecutor,
High Court, Madras.

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

H.C.P. No. 1678 of 2019

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



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