

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. 1690 of 2019

S.Uma Maheshwari Petitioner/wife of the Detenu

-vs-

- 1.The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Dharmapuri District,
Dharmapuri. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the second respondent herein pertaining to the detention order made in S.C.No.08/2019 dated 09.07.2019 and quash the same and direct the respondents to produce the body of the detenu K.Sundarvel, S/o. Krishnan, aged about 40 years, now detained in Central Prison, Salem before this Court and set the detenu at liberty forthwith.

WEB COPY

For Petitioner : Mr.P.Saravanan

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, K.Sundarvel, S/o. Krishnan, male, aged about 40 years. The detenu has been detained by the second respondent by his order in S.C.No.08/2019 dated 09.07.2019, 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 4 of the grounds of detention are extracted below:

"5. I am aware that Thiru Sundarvel was produced before the Court of Judicial Magistrate, Palacode on 07-06-2019 in Karimangalam Police Station Crime No.172/2019 u/s 392 r/w 506(ii) IPC, Karimangalam Police Station Crime Nos. 443/2018, 61/2019, 94/2019, 121/2019 u/s 457, 380 IPC, Cr.No.44/2019, u/s 454, 380 IPC and Crime No.148/2019 u/s 379 IPC and was remanded to Judicial Custody and lodged at the Central Prison, Salem as a remand prisoner till 21.06.2019. In these cases his remand has been extended till 05.07.2019 and then upto 19.07.2019. He has filed bail petition for the ground case Karimangalam Police Station Crime No.172/2019 u/s 392 r/w 506(ii) IPC before the Judicial Magistrate, Palacode in CrI.M.P.No.1984/2019 dt.26.06.2019 and the same is pending. He has also filed bail petitions in his adverse cases of Karimangalam Police Station Crime Nos. 443/2019, 61/2019, 94/2019 and 121/2019 u/s 457, 380 IPC, Crime No.44/2019 u/s 454, 380 IPC and Crime No.148/2019, u/s 379 IPC, before the Judicial Magistrate, Palacode in CrI.M.P.Nos. 1981/2019, 1980/2019, 1986/2019, 1983/2019 and 1985/2019 respectively, dt 26.06.2019 and the same were also pending. I am also aware that in

similar cases registered against accused by names Tvl. Venkatesan and Vinoth were released on bail in Harur Police Station Crime No.336/2015, u/s 392, 397 IPC, by the District Principal Sessions Court, Dharmapuri vide in Crl.M.P.No.1503/2015, dt 07.08.2015 and in another one similar case registered against accused by names Tvl Murugan and Kalimuthu @ Muthaiah were released on bail in Adhiyamankottai Police Station Crime No.302/2018 u/s 457, 380 IPC by the Judicial Magistrate II, Dharmapuri vide in Crl.M.P.No.4754/2018 dated 14.11.2018 and in another one similar case registered against accused by name Thiru. Mani was released on bail in Dharmapuri Police Station Crime No.812/2016 u/s 370 IPC by the Judicial Magistrate No.1, Dharmapuri vide in Crl.M.P.n.5572/2016 dt. 19.12.2016 and in another one similar case registered against accused by name Thiru. Murugesan was released on bail in Kaverippattinam Police Station Crime No.177/2016 u/s 454, 380 IPC by the Judicial Magistrate No.1, Krishnagiri vide in Crl.M.P.No. 5517/2016 dated 28.11.2016. Hence, I infer that it is very likely of his (Thiru. Sundarvel) coming out on bail, in the above said case, since bails are granted by the Courts in such cases. If he comes out on bail, he will 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 against accused by names Tvl. Venkatesan and Vinoth were released on bail in Harur Police Station Crime No.336/2015, u/s 392, 397 IPC, by the District Principal Sessions Court, Dharmapuri in Crl.M.P.No.1503/2015, dt 07.08.2015 and in another similar case registered against accused by names Tvl Murugan and Kalimuthu @ Muthaiah were released on bail in Adhiyamankottai Police Station Crime No.302/2018 u/s 457, 380 IPC by the Judicial Magistrate II, Dharmapuri in Crl.M.P.No.4754/2018 dated 14.11.2018 and in another one similar case registered against the accused by name Thiru. Mani was released on bail in Dharmapuri Police Station Crime No.812/2016 u/s 370 IPC by the Judicial Magistrate No.1, Dharmapuri in Crl.M.P.No.5572/2016 dt. 19.12.2016 and in another one similar case registered against accused by name Thiru. Murugesan was released on bail in Kaverippattinam Police Station Crime No.177/2016 u/s 454, 380 IPC by the Judicial Magistrate No.1, Krishnagiri vide in Crl.M.P.No. 5517/2016 dated 28.11.2016 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.172/2019 and indulge in such activities prejudicial to the

maintenance of public order. The similar cases relied on by the authority were registered for the offences under Sections 392, 397 and 457, 380 and 379 and 454 respectively whereas the offences involved in the ground case are u/s 392 r/w 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 in S.C.No.08/2019 dated 09.07.2019, passed by the second respondent is set aside. The detenu, namely, K.Sundarvel, S/o. Krishnan, male, aged about 40 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

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Dharmapuri District,
Dharmapuri.
- 3.The Superintendent,
Central Prison,Salem.
- 4.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

A.SK(03/12/2019)

H.C.P. No. 1690 of 2019