

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

Coram

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

H.C.P.No. 1715 of 2019

Kaliammal

.. Petitioner

Vs

State, rep.by:

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

2.The District Magistrate and
District Collector,
Dharmapuri

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in S.C.No.10/2019, dated 04.08.2019, on the file of the District Magistrate and District Collector, Dharmapuri, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu Perumal, S/o.Periyannan, aged about 27 years now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

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 mother of the detenu, Perumal, S/o.Periyannan, male, aged about 27 years. The detenu has been

detained by the second respondent by his order in S.C.No.10/2019, dated 04.08.2019, 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 perused the materials available on record.

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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru Perumal was produced before the Judicial Magistrate, Pappireddippatti on 27.06.2019 in Bommidi Police Station Crime No.91/2019 u/s 457, 380 IPC @ 457, 380, 399, 402 IPC and was remanded to judicial custody and lodged at the Central Prison, Salem as a remand prisoner till 11.07.2019. His remand has been extended till 25.07.2019 and then upto 08.08.2019. He has filed bail petition for the above said case before the District Principal Sessions Court, Dharmapuri in CrI.M.P.No. 1082/2019 dt. 23.07.2019 and the same is pending. The co-accused Chinnathambi and Sumathi, who were concerned in this case, have filed bail petition in the above said case, before the Court of District Principal Sessions, Dharmapuri in CrI.M.P.No.936/2019 and the same was dismissed on 15.07.2019. Thiru. Elavarasan, who was concerned in this case, has filed bail petition in the above said case, before the Court of District Principal Sessions Dharmapuri, in CrI.M.P.No.1002/2019 and the same was dismissed on 15.07.2019 and Thiru. Prakash @ Prasath, who was concerned in this case, has filed bail petition in the above said case, before the Court of District Principal Sessions, Dharmapuri in CrI.M.P.No.1020/201 and the same was dismissed on 15.07.2019. I am also aware that in a similar case registered against an 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 No.II,

Dharmapuri, vide in Crl.M.P.No. 4754 of 2018, dated 14.11.2018. Hence, I infer that it is very likely of his (Thiru.Perumal) coming out on bail, in the above said case, since bails are granted by 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 in a similar case registered against an 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 No.II, Dharmapuri, vide in Crl.M.P.No. 4754 of 2018, dated 14.11.2018 and therefore, there is a real possibility of the detenu coming out on bail 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 457, 380 IPC whereas the offences involved in the ground case are under Sections 457, 380, 399 and 402 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.10/2019, dated 04.08.2019, passed by the second respondent is set aside. The detenu, namely, Perumal, S/o.Periyannan, male, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

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2.The District Magistrate and
District Collector,
Dharmapuri

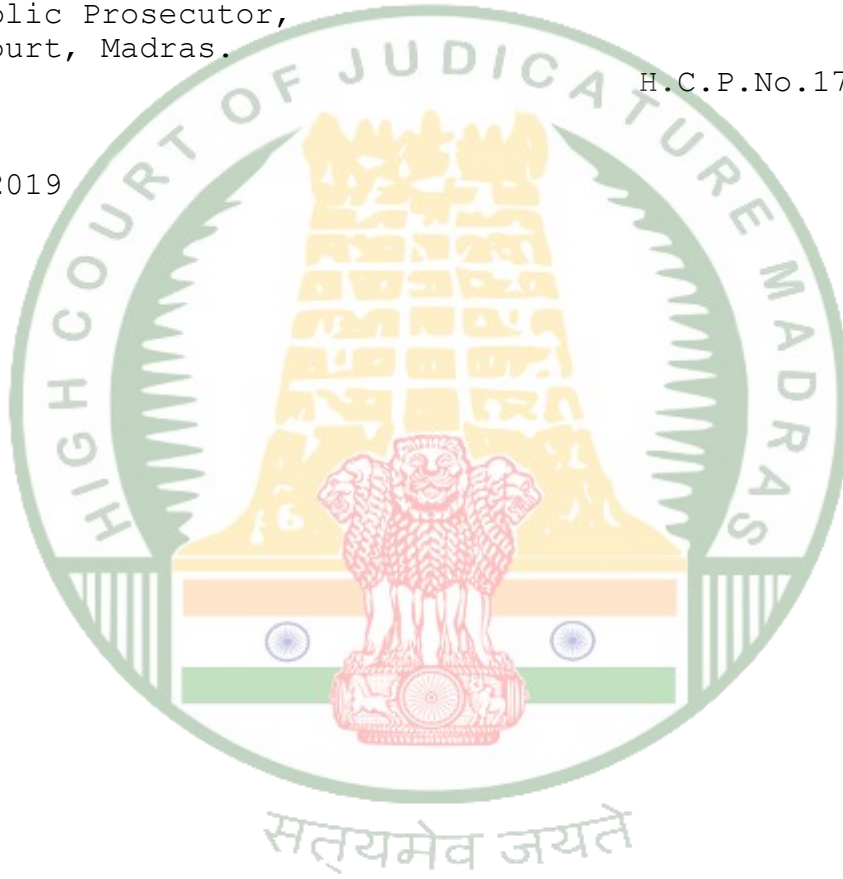
3.The Superintendent,
Central Prison, Salem.

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

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1715 of 2019

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nr 16/12/2019



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