

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN
H.C.P. No. 1754 of 2019

Mohan @ Mohanraj

... Petitioner/Detenu

-vs-

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

2.The Commissioner of Police,
Greater Chennai.

... 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 23.07.2019 in No.418/BCDFGISSSV/2019 the petitioner Mohan @ Mohanraj, male, aged 25 years, S/o. Ganesan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.R.Prathap Kumar
: Addl. Public Prosecutor

सत्यमेव जयते
ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, Mohan @ Mohanraj, S/o. Ganesan, male, aged 25 years, is the detenu. The detenu has been detained by the second respondent by his order in No.418/BCDFGISSSV/2019 dated 23.07.2019, 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 3 of the grounds of detention are extracted below:

"3. I am aware that Thiru. Mohan @ Mohanraj, is in remand in M5 Ennore Police Station Cr.No.317/2019 and lodged at Central Prison, Vellore. He has not moved any bail application for M5 Ennore Police Station Cr.No.317/2019. The sponsoring authority has stated that the relatives of Thiru. Mohan @ Mohanraj are taking action to take him out on bail in M5 Ennore Police Station Cr.No.317/2019 by filing bail application before the appropriate court. In a similar case registered u/s 341, 302 IPC in C3 Manimangalam Police Station Cr.No.75/2016 bail was granted by the Principal Sessions Court, Kancheepuram District, Chengalpattu in CrI.MP.No.728/2016. Hence, I infer that there is real possibility of his coming out on bail in M5 Ennore Police Station Cr.No.317/2019 by filing bail application before the appropriate court, since in similar cases bail is granted by the court after a lapse of time. 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 u/s 341, 302 IPC in C3 Manimangalam Police Station Cr.No.75/2016 bail was granted by the Principal Sessions Court, Kancheepuram District, Chengalpattu in CrI.MP.No.728/2016 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.317/2019 and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offence under Sections 341 and 302 IPC whereas the ground case has been registered for the offences u/s 147,148,427,448,302 and 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 No.418/BCDFGISSSV/2019 dated 23.07.2019 passed by the second respondent is set aside. The detenu, namely, Mohan @ Mohanraj, S/o. Ganesan, 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

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Central Prison,Vellore.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department, Fort St.George, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

AKM/20.12.19/3P-6C /

H.C.P. No. 1754 of 2019