

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and

The Hon'ble Mr. Justice RMT. TEEKAA RAMAN
H.C.P. No. 1753 of 2019

Nageena

... Petitioner

-vs-

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

2.The District Collector & District Magistrate,
Vellore District,
Vellore - 9. ... 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 07.08.2019 in C3/D.O.No.91/2019 against the petitioner's husband Naseer, male, aged 24 years, S/o. Ansar Basha, 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

ORDER

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

The petitioner is the wife of the detenu, Naseer, S/o. Ansar Basha, male, aged 24 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.91/2019 dated 07.08.2019, 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 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. Naseer was produced before the Judicial Magistrate No.IV, Vellore on 06.07.2019 in the ground case in Vellore North Police Station Crime No.513/2019 u/s 294(b), 363, 307, 506 (ii) IPC @ 294(b), 363, 302, 506(ii) IPC and was remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 19.07.2019. Further, his remand was extended upto 03.08.2019 and 20.08.2019.

I am aware that Thiru. Naseer has not filed a bail application before any court in ground case in Vellore North Police Station Crime No.513/2019, u/s 294(b), 363, 307, 506(ii) IPC @ 294(b), 363, 302, 506 (ii) IPC. As far as the ground case concerned, in a similar case registered at Kanchi Taluk Police Station Crime No.15/2019, under Section 147,148, 506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused K.Sandhar, S/o. Kuppan and Moses, S/o. Joseph by the Court of Hon'ble Sessions Court- II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.2016. As bails are being granted by courts in such cases, there is most likely of his (Thiru.Kannan) coming out of bail by filing bail application in any court. If he enlarges himself on bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and public peace."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered at Kanchi Taluk Police Station Crime No.15/2019, under Section 147,148, 506(ii), 302 IPC @ 120B, 147, 148, 506 (ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused K.Sandhar, S/o. Kuppan and Moses, S/o. Joseph by the Court of Hon'ble Sessions Court- II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.2016 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.513/2019 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 147,148,

506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC whereas the ground case was registered for the offence under Sections 294(b), 363, 307, 506(ii) IPC @ 294(b), 363, 302, 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 C3/D.O.No.91/2019 dated 07.08.2019 passed by the second respondent is set aside. The detenu, namely, Naseer, S/o. Ansar Basha, male, aged 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Vellore District, Vellore - 9.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The joint Secretary to Governemt,
Public Law and Order, Fort St.George,
Chennai-09.

H.C.P. No. 1753 of 2019

PM (CO)
CSR(18/12/2019)