

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

H.C.P.NO.1826 OF 2019

Ramya Petitioner/Wife of Detenu

-vs-

1. The State of Tamil Nadu
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
 2. The District Magistrate and District Collector,
Office of the Collectorate,
Tiruppur District,
Tiruppur.
- Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus directing to produce the body of the detenu Madhan @ Sabi @ Muhamed Sabi, Son of Late. Nawaz, aged 27 years, presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 05.08.2019 made in vide Cr.M.P.No.03/Goonda/2018 passed by the second respondent, quash the same.

For Petitioner : Mr.B.Mohan

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, Madhan @ Sabi @ Muhamed Sabi, Son of Late. Nawaz, aged 27 years. The detenu has been detained by the second respondent by his order in

Cr.M.P.No.03/Goonda/2018, dated 05.08.2019, 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 7th and 8th adverse cases and 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.Madhan alias Sabi alias Mohamed Sabi now lodged at Central Prison, Coimbatore as a remand prisoner in Palladam Police Station Crime No.84/2019 under Sections 294(b), 323,506(ii) IPC, Palladam Police station Crime No.403/2019 under Section 294(b), 324, 506(ii) IPC and Palladam Police Station Crime No.736/2019 under Section 395 r/w 397 IPC cases and his remand period has been extended in the above cases till 16.08.2019. I also aware that he has not moved bail petitions in the above said cases in any court till the date. However, it is real possibility coming out bail in the above cases in future by filing bail petitions before the concerned courts. Because, I am aware that the accused Madhankumar, who was arrested in Tiruppur District, Vellakovil Police Station Crime No.437/2016 under Section 364A, 365, 395 r/w 398 IPC was released on bail by the order of the High Court of Madras in Crl.O.P.No. 22229/2016 dated 15.10.2016. Accordingly, if Madhan alias Sabi alias Mohamed Sabi has been released on bail by filing bail petitions in the above said cases before the concerned courts, again he will indulge in such act continuously, it has been revealed on consideration of antecedents. "

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered at Vellakovil Police Station Cr.No.437/2016

under Sections 364A, 365, 395 r/w 398 IPC, wherein the accused Madhan Kumar was released on bail by the order of the High Court of Madras in Crl.O.P.No. 22229/2016 dated 15.10.2016 and therefore, there is a real possibility of the detenu coming out on bail in the 7th and 8th adverse cases in Crime Nos.84 of 2019 and 403 of 2019 and in the ground case 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 Sections 364A, 365, 395 r/w 398 IPC whereas the 7th and 8th adverse cases and the ground case were registered for the offence under Sections 294(b), 323,506(ii) IPC and 294(b), 324, 506(ii) IPC and Section 395 r/w 397 IPC respectively. 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 Cr.M.P.No.03/Goonda/2018, dated 05.08.2019 passed by the second respondent is set aside. The detenu, namely, Madhan @ Sabi @ Muhamed Sabi, Son of Late. Nawaz, aged 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The District Magistrate and District Collector,
Office of the Collectorate,
Tiruppur District,
Tiruppur.
3. The Superintendent,
Central Prison,Coimbatore.

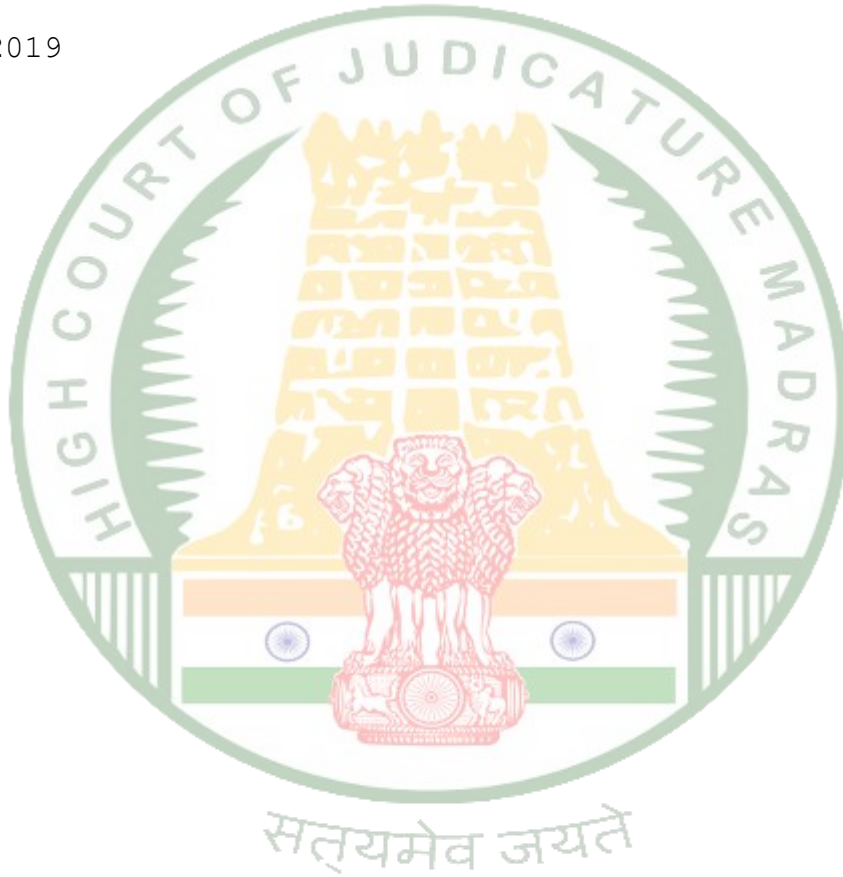
4. The Joint Secretary to Government,
Public (L & O), Fort St.George,
Chennai-9.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Mohan, Advocate, S.R.No.94265

H.C.P.No.1826 of 2019

VGII (CO)
CS/19/12/2019



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