

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM

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

H.C.P.NO.1807 OF 2019

Pachaiyappan

... Petitioner

-vs-

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

2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600 007.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records connected with the detention order of the second respondent in BCDFGISSSV No.399/2019, dated 12.07.2019 and quash the same and direct the respondents to produce the body and person of petitioner's son namely Sasi @ Sasikumar, son of Pachaiyappan, aged about 29 years, detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.M.Santharam

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 father of the detenu, Sasi @ Sasikumar, son of Pachaiyappan, aged about 29 years. The detenu has been detained by the second respondent by his order in

No.399/BCDFGISSSV/2019 dated 12.07.2019, 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 and we have also perused the records carefully.

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 second adverse case 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru. Sasi @ Sasikumar is in remand in J-6 Tiruvanmiyur Police Station Crime Nos.434/2019 and 435/2019 and he has not moved any bail applications for J-6 Thiruvanmiyur Police Station Nos.434/2019 and 435/2019 so far. The sponsoring authority stated that Thiru Sasi @ Sasikumar's relatives are taking action to take him out on bail in J-6 Thiruvanmiyur Police Station Crime Nos.434/2019 and 435/2019 by filing bail application before the appropriate court. In a similar case registered at R-2 Kodambakkam Police Station Cr.No.324/2018 under Sections 341,294(b),336,323, 427, 397 and 506(ii) IPC bail was granted by the Court of Principal Sessions Chennai in Crl.M.P.No.8608/2018. In a similar case registered at T-3 Korattur Police Station Cr.No.193/2018 under Sections 294(b), 324,307, and 506 (ii) IPC bail was granted by the Court of Principal district and Sessions Judge, Thiruvallur in Crl.M.P.No.1232/2018. Hence, I infer that there is real possibility of his coming out on bail in J-6 Thiruvanmiyur Police Station Crime Nos.434/2019 and 435/2019 by filing bail application before the appropriate court, since in similarly placed cases bails are granted by the courts 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 similar case registered at R-2 Kodambakkam Police Station Cr.No.324/2018 under Sections 341,294(b),336,323, 427, 397 and 506(ii) IPC bail was granted by the Court of Principal Sessions Chennai in Crl.M.P.No.8608/2018 and in another similar case registered at T-3 Korattur Police Station Cr.No.193/2018 under Sections 294(b), 324,307, and 506(ii) IPC bail was granted by the Court of Principal District and Sessions Judge, Thiruvallur in Crl.M.P.No.1232/2018 and therefore, there is a real possibility of the detenu coming out on bail in the second adverse case and ground case in Crime Nos.434 and 435 of 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 u/s 341,294(b),336,323, 427, 397 and 506(ii) IPC and 294(b), 324,307, and 506(ii) IPC whereas the second adverse case and the ground case were registered for the offence under Sections 341, 294(b), 324, 307 and 506(ii) IPC and 341, 294(b), 323, 397, 427, 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.399/BCDFGISSSV/2019 dated 12.07.2019 passed by the second respondent is set aside. The detenu, namely, Sasi @ Sasikumar, son of Pachaiyappan, aged about 29 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

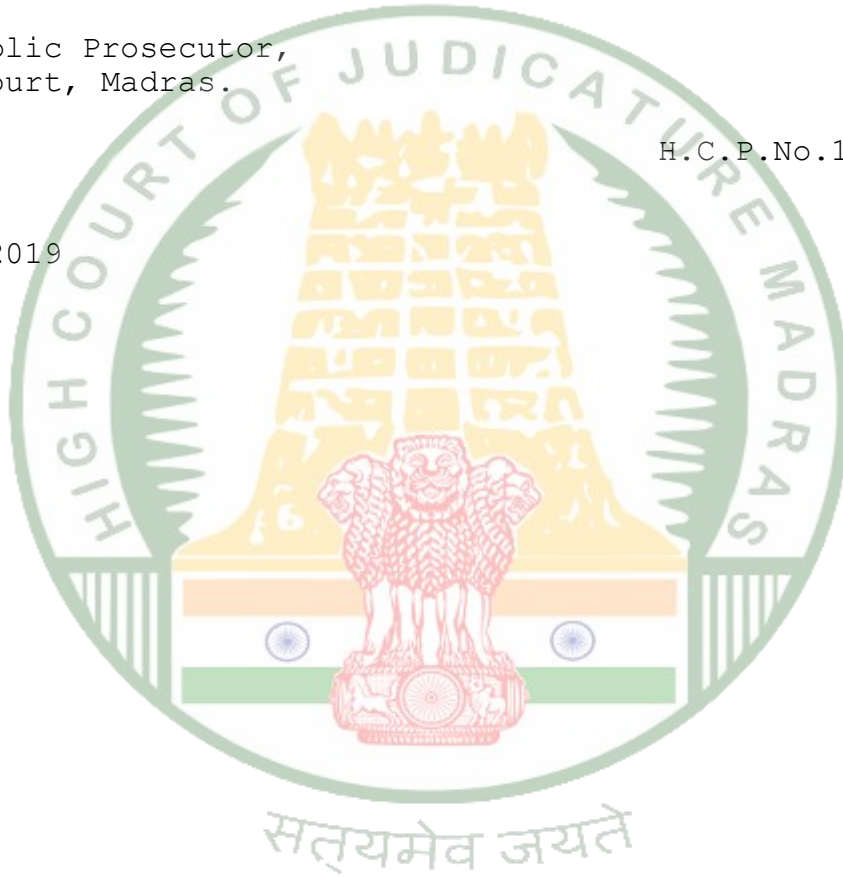
1. The Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

WEB COPY

2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
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.1807 of 2019

VD(CO)
CS/26/12/2019



WEB COPY