

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. 1831 of 2019

Banu

... Petitioner

-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 Commissioner of Police,
Greater Chennai,
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 records relating to the detention order in Memo No.338/BCDFGISSSV/2019 dated 20.06.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Matti Dinesh @ Hemanth, S/o. Elavarasan, aged about 23 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Matti Dinesh, Hemanth, S/o. Elavarasan, aged about 23 years, the detenu herein set him at liberty.

For Petitioner : Mr.R.Muthukumar

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, Matti Dinesh @ Hemanth, S/o. Elavarasan, male, aged about 23 years. The detenu has been detained by the second respondent by his order in Memo No.338/BCDFGISSSV/2019 dated 20.06.2019, 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 third and fourth 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 4 of the grounds of detention are extracted below:

"4. I am aware that Thiru. Matti Dinesh @ Hemanth is in remand in Royapuram Railway Police Station Crime Nos.11/2019, 12/2019 and Chennai Central Railway Police Station Cr.No.125/2019 and he has moved a bail application for Royapuram Railway Police Station Crime No.12/2019 the Court of XVI Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No. 5746/2019 and the same was dismissed. He has not moved any bail application for Royapuram Railway Police Station Crime No.11/2019 and Chennai Central Railway Police Station Cr.No.125/2019 so far. The sponsoring authority has stated that Thiru. Matti Dinesh @ Hemanth's relatives are taking action to take him out on bail in Royapuram Railway Police Station Crime No.11/2019 and Chennai Central Railway Police Station Cr.No.125/2019 by filing application and another bail application for Royapuram Railway Police Station Cr.No.12/2019 before the appropriate Court. It is pertinent to note that in a similar case registered at S-6 Sankar Nagar Police Station Crime No.1003/2018 u/s 379 IPC bail was granted by the Court of Judicial Magistrate, Tambaram, Chennai in Crl.M.P. No.1958/2019. In the similar case registered at R-2 Kodambakkam Police Station Cr.No.1348/2017 under Sections 341,294(b), 324,392 and 506(ii) IPC bail was granted by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.103/2018. Hence, I infer that there is real possibility of his coming out on bail in Royapuram Railway Police Station Crime No.11/2019 and Chennai Central Railway Police Station Cr.No.125/2019 by

filing bail application and another bail application for Royapuram Police Station Crime No.12/2019 before the appropriate court, since in similarly placed cases bails are granted by 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 Cr.No.1348/2017 under Sections 341, 294(b), 324, 392 and 506(ii) IPC bail was granted by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.103/2018 and therefore, there is a real possibility of the detenu coming out on bail in the third and fourth adverse cases and ground case in Crime Nos.11/2019, 125 of 2019 and 12 of 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 341, 294(b), 324, 392 and 506(ii) IPC whereas the third and fourth adverse cases and ground case were registered for the offence under Sections 392 IPC, 379 IPC and 294(b), 323, 336, 392 and 506(ii) 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 Memo No.338/BCDFGISSSV/2019 dated 20.06.2019 passed by the second respondent is set aside. The detenu, namely, Matti Dinesh @ Hemanth, S/o. Elavarasan, male, aged about 23 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 Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.

3.The Superintendent,
Central Prison,Puzhal,Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy To

The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9

H.C.P. No. 1831 of 2019

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