

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1912 of 2019

Usha

... Petitioner

-vs-

1.The State of Tamil Nadu
Rep. By the Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector & District Magistrate,
Kancheepuram District,
Tamil Nadu.

.... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the detention order in Memo No. BCDFGISSSV No.51/2019 dated 12.08.2019 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 husband Prabha @ Prabhu @ Prabhakaran, aged about 38 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Prabha @ Prabhu @ Prabhakaran, aged about 38 years, the detenu herein at liberty.

For Petitioner : Mr.M.Kaveriselvam

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, Prabha @ Prabhu @ Prabhakaran, son of Sarangapani, male, aged about 38 years. The detenu has been detained by the second respondent by his order in Memo No. BCDFGISSSV No.51/2019 dated 12.08.2019, 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 Prabha @ Prabhu @ Prabhakaran, S/o. Sarangapani was arrested in Otterin PS Cr.No.158/2019 on 27.06.2019 and produced before the Judicial Magistrate II, Chengalpattu on 28.06.2019 ordered to be remanded under judicial custody upto 11.07.2019 and lodged at Central Prison, Puzhal, Chennai - 600 066 as a remand prisoner. His remand period was periodically extended upto 22.08.2019. He has filed a bail petition in above case before Principal District and Sessions Court, Chengalpattu on 31.07.2019 in above case under CrI.M.P.No.4102/2019 and the same was pending before the Court. If he will be released on bail again he will indulge in activities prejudicial to the maintenance of public peace and public order. However, in similar nature of the offence the similar accuse had released on bail by filing a bail petition through proper Court i.e., In Vishnu Kanchi PS Cr.No. 1179/2015 u/s 147, 148, 302 IPC similar accused Balaji, S/o. Mariyappan and Suresh, S/o. Natarajan were released on bail through District and Sessions Court-II, Kancheepuram in

C.M.P.No.1933/2015 on 21.12.2015."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration similar case registered in Vishnu Kanchi PS Cr.No. 1179/2015 u/s 147, 148, 302 IPC similar accused Balaji, S/o. Mariyappan and Suresh, S/o. Natarajan were released on bail through District and Sessions Court-II, Kancheepuram in C.M.P.No.1933/2015 on 21.12.2015 and, therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.158/2019 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, 302 IPC whereas the offences involved in the ground case are under Sections 147,148,341,448,307 and 302 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 iMemo No. BCDFGISSSV No.51/2019 dated 12.08.2019, passed by the second respondent is set aside. The detenu, namely, Prabha @ Prabhu @ Prabhakaran, son of Sarangapani, male, aged about 38 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,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Kancheepuram District,
Tamil Nadu.
- 3.The Superintendent,
Central Prison,Puzhal,Chennai - 600 066.

4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government
Public (Law & Order) Dept.,
Fort St.George, Chennai-9.

H.C.P. No. 1912 of 2019

EU(CO)
CB(19/12/2019)



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