

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

Coram

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

H.C.P. No. 1908 of 2019

S.Durga

... Petitioner

-vs-

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

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.

3.State Rep. by
The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai - 600 021.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in Memo No. 504/BCDFGISSSV/2019 dated 19.08.2019 on the file of the second respondent and to produce the petitioner's husband the detenu Sakthivel, son of Balachandran, before this Court now confined at Central Prison, Puzhal, Chennai and set him at liberty forthwith.

For Petitioner : Mr.G.Krishnamurthy

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, Sakthivel, son of Balachandran, male, aged 37 years. The detenu has been detained by the second respondent by his order in Memo No. 504/BCDFGISSSV/2019 dated 19.08.2019, 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 3 of the grounds of detention are extracted below:

"3. I am aware that Thiru Sakthivel is in remain in H6 R.K.Nagar Police Station Cr.No.701/2019 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for H6 R.K.Nagar Police Station Cr.No.701/2019. The sponsoring authority has stated that the relatives of Thiru. Sakthivel are taking action to take him out on bail in H6 R.K.Nagar Police Station Cr.No.701/2019 by filing bail application before the appropriate court. In a similar case registered u/s 147,148,341,307 & 302 IPC in F1 Chintadripet Police Station Cr.No.809/2014 bail was granted by the Principal Sessions Court, Chennai in CrI.M.P.No.17395/2014. Hence, I infer that there is real possibility of his coming out on bail in H6 R.K.Nagar Police Station Cr.No.701/2019 by filing bail application before the appropriate court, since in similar case bail is granted by the court 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 u/s 147,148,341,307 & 302 IPC in F1 Chintadripet Police Station Cr.No.809/2014 bail was granted by the Principal Sessions Court, Chennai in CrI.M.P.No.17395/2014 and, therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.701/2019 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 147,148,341,307 & 302 IPC whereas the offences involved in the ground case are under Sections 294(b), 307 and 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 Memo No. 504/BCDFGISSSV/2019 dated 19.08.2019, passed by the second respondent is set aside. The detenu, namely, Sakthivel, son of Balachandran, male, aged 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

mml/ssm

To

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

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.

3.The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai - 600 021.

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

5.The Public Prosecutor,
High Court, Madras.

6.The Joint Secretary to Government
Public Law and Order
Fort St.George Chennai-9

H.C.P. No. 1908 of 2019

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