



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.11.2019

CORAM

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

H.C.P.NO.1958 OF 2019

Jothi

... Petitioner

-vs-

1. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.
2. The Government of Tamil Nadu,
Rep.By its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The Superintendent,
Central Prison, Puzhal,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in detention order passed in Memo No.479/BCDFGISSSV/2019 dated 08.08.2019 on the file of the first respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's son Prabhakaran, M/A 25 years, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

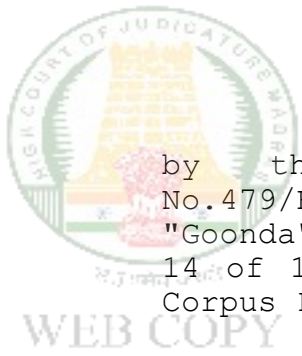
For Petitioner : Mr.D.Padmanabhan

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, Prabhakaran, S/o.Palanivel, male, aged 25 years. The detenu has been detained



by the first respondent by his order in Memo No.479/BCDFGISSSV/2019 dated 08.08.2019, 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 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. Prabakaran is in remand in T-4 Maduravoyal Police Station Crime Nos.474/2019 and 475/2019 and he has not moved bail applications for T-4 Maduravoyal Police Station Crime Nos.474/2019 and 475/2019 before the Court of Principal District and Sessions Judge, Thiruvallur, in CrI.M.P.Nos. 3655/2019 and 3654/2019 respectively and the same are dismissed on 05.08.2019. The sponsoring authority has stated that the relatives of Thiru.Prabakaran are taking action to take him out on bail by filing another bail applications for T-4 Maduravoyal Police Station Crime Nos. 474/2019 and 475/2019 before the appropriate court. Further, in a similar case, registered at F-1 Chintadripet P.S.Cr.No.809/2014 u/s 147,148, 341, 307 IPC @ 302 IPC bail was granted by the Principal Sessions Judge at Chennai in CrI.M.P.No.17395/2014. In a similar case registered u/s 341,294(b), 336,427,392,397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail by filing another bail applications for T-4 Maduravoyal Police Station Crime Nos.474/2019 and 475/2019 before the appropriate court since in similar 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 the similar case registered at F-1 Chintadripet P.S.Cr.No.809/2014 u/s 147,148, 341, 307 IPC @ 302 IPC bail was granted by the Principal Sessions Judge at Chennai in CrI.M.P.No.17395/2014 and in a similar case registered u/s 341,294(b),336,427,392,397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.475/2019 and in the second adverse case in Crime No.474/2019 and indulge in such activities prejudicial to the maintenance of public order. The similar cases relied on by the authority were registered for the offence under u/s 147,148, 341, 307 IPC @ 302 IPC, 341,294(b),336,427,392,397 & 506(ii) IPC whereas the second adverse case and ground case have been registered for the offences u/s 147,148,341,302 and 307 IPC and 147, 148, 341, 294(b), 336, 427,397 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 No.479/BCDFGISSSV/2019 dated 08.08.2019 passed by the first respondent is set aside. The detenu, namely, Prabakaran, S/o. Palanivel, male, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.



2. The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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.1958 of 2019

KK(CO)
CS/06/01/2020