



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

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

H.C.P. No. 1978 of 2019

C.Preetha ... Petitioner/Wife of the Detenu

-vs-

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

2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 25.08.2019 in BCDFGISSSV No.54/2019 against the petitioner's husband Chandru @ Vaiko, S/o. Sekar, male, aged 24 years who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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, Chandru @ Vaiko, son of Sekar, male, aged 24 years. The detenu has been detained by the second respondent by his order in Memo No.54/BCDFGISSSV/2019 dated 25.08.2019, 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.

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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. Chandru @ Vaiko, S/o. Sekar was arrested in Otteri PS Cr.No.158/2019 on 05.07.2019 and produced before the Judicial Magistrate II, Chengalpattu on the same day ordered to be remanded under judicial custody upto 19.07.2019 and lodged at Central Prison, Puzhal, Chennai - 600 066 as a remand prisoner. His remand period was periodically extended upto 05.09.2019. He has filed a bail petition before the Principal District and Sessions Court, Chengalpattu on 09.08.2019 in CrI.M.P.No.4240/2019 and the same was dismissed on 14.08.2019. Meanwhile his wife Preetha has given a statement u/s 161(3) Cr.P.C. On 20.08.2019 that already a bail petition filed on behalf of her husband was dismissed at Chengalpattu Court, hence due to their family circumstances they are not in a position to file another bail petition in the above case for her husband and in due course of time she will try to file a bail petition before any appropriate court after making consideration with her counsel. In this circumstances if he will be released on bail again he will indulge in the activities prejudicial to the maintenance of public health and public order. However, in similar nature of offence the similar accused had released on bail by filing a bail petition through appropriate Court i.e., In Vishnu Kanchi PS Cr.No.1179/2015 u/s 147, 148, 302 IPC similar accused Thiru. Balaji S/o. Mariyappan and Thiru. Suresh S/o. Natarajan were released on bail through District Sessions Court-II, Kancheepuram in C.M.P.No.1933/2015 on 21.12.2015. If he comes out on bail, he will further indulge in such activities in future, 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 in Vishnu Kanchi PS Cr.No.1179/2015 u/s 147, 148, 302 IPC similar accused Thiru. Balaji S/o. Mariyappan and Thiru. Suresh S/o. Natarajan were released on bail through District 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 cases relied on by the authority were registered for the offence under 147, 148, 302 IPC whereas the ground case have been registered for the offences u/s 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 in Memo No.54/BCDFGISSSV/2019 dated 25.08.2019 passed by the second respondent is set aside. The detenu, namely, Chandru @ Vaiko, son of Sekar, male, aged 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal -II, Chennai - 600 066.
- 4.The Public Prosecutor, High Court, Madras.

AKM/21.01.2020/2P-5C /

H.C.P. No. 1978 of 2019