

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

Coram

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

H.C.P. No. 1985 of 2019

Siva ... Petitioner/Father of the Detenue

-vs-

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

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

... 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 14.08.2019 in Memo No.496/BCDFGISSSV/2019 against the petitioner's son Karthi @ Boss @ Karthikeyan, male, aged 22 years, S/o. Siva 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 father of the detenu, Karthi @ Boss @ Karthikeyan, S/o. Siva, male, aged 22 years. The detenu has been detained by the second respondent by his order in Memo No.496/BCDFGISSSV/2019 dated 14.08.2019, 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 4 of the grounds of detention are extracted below:

"4. I am aware that Thiru. Karthi @ Boss @ Karthikeyan who was remanded in S-14, Peerkankaranai P.S.Cr.No.466/2019 and has filed bail application in S-14 Peerkankaranai P.S.Cr.No.466/2019 before the Principal District and Sessions Judge at Chengalpattu vide Crl.M.P.No.3931/2019 and the same was dismissed. The sponsoring authority has stated that Thiru. Karthi @ Boss @ Karthikeyan's relatives are taking action to take him out on bail in S-14 Peerkankaranai P.S.Cr.No.466/2019 by filing another bail application before the appropriate court. In a similar case, registered at E-2, Royapet P.S.Cr.No.413/2016, u/s 147, 148, 341, 324, 336, 307, 506(ii) IPC r/w 3 of TNPPDL Act bail was granted by the court of Principal Sessions, Chennai in Crl.M.P.Nos. 6197 & 6764/2016. Hence, I infer that there is real possibility of his coming out on bail in S-14, Peerkankaranai P.S.Cr.No.466/2019 by filing another bail application before the appropriate court, since in similarly placed cases bail is granted by the court after a lapse of time. 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 at E-2, Royapet P.S.Cr.No.413/2016, u/s 147, 148, 341, 324, 336, 307, 506(ii) IPC r/w 3 of TNPPDL Act bail was granted by the court of Principal Sessions, Chennai in Crl.M.P.Nos. 6197 & 6764/2016 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.466/2019 and indulge in such activities prejudicial

to the maintenance of public order. The similar case relied on by the authority was registered for the offence under u/s 147, 148, 341, 324, 336, 307, 506(ii) IPC r/w 3 of TNPPDL Act whereas the ground case has been registered for the offences u/s 147, 148, 341, 294(b), 324, 307, 506(ii) IPC r/w 3 of TNPPDL Act. 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.496/BCDFGISSSV/2019 dated 14.08.2019 passed by the second respondent is set aside. The detenu, namely, Karthi @ Boss @ Karthikeyan, S/o. Siva, male, aged 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

mmi/ssm
To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.
- 3.The Superintendent,
Central Prison,Puzhal,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public(law and order)
Fort. St. George
Chennai 9.

H.C.P. No. 1985 of 2019

VGI(CO)
SP(24/01/2020)