

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

Coram

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

H.C.P. No. 1994 of 2019

M.Paechaye ... Petitioner/Mother of the detenute

-vs-

- 1.The District Collector cum District Magistrate,
Office of the Collectorate,
Salem District.
- 2.The State of Tamil Nadu
Rep. by its Secretary to the Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records leading to the detention of the petitioner's son Kumaresan, S/o. Mookkan has been detained under Act 14/1982 as a "Goonda" vide detention in C.M.P.No.31/Goonda/C2/2019 made by the first respondent in his order dated 17.08.2019 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Salem.

For Petitioner : M/s.Dass and Viswa Associates

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, Kumaresan, S/o. Mookkan, male, aged 29 years. The detenu has been detained by the first respondent by his order in C.M.P.No.31/Goonda/C2/2019

dated 17.08.2019, 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. Kumaresan is in remand in Attur Town Police Station Crime No.98/2019 for the offences under Section 392, 397 IPC and he filed a bail application before the Principal Sessions Judge, Salem in C.M.P.No. 2538/2019 which was dismissed on 10.08.2019. In similar case registered at Salem Town Crime Police Station Crime No.246/2012 u/s 341, 392 r/w 397, 427 and 506(ii) IPC bail was granted to the accused Thiru.Duraisamy by the High Court, Madras in Crl.O.P.No.25955/2012 on 19.11.2012. Hence, there is a real possibility of his coming out on bail by filing a bail application for the above case before the Higher Court. If he comes out on bail, he will indulge in such 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 Salem Town Crime Police Station Crime No.246/2012 u/s 341, 392 r/w 397, 427 and 506(ii) IPC bail was granted to the accused Thiru.Duraisamy by the High Court, Madras in Crl.O.P.No.25955/2012 on 19.11.2012 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.98/2019 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 341, 392 r/w 397, 427 and 506(ii) IPC bail whereas the ground case has been registered for the offences u/s 392 & 397 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 C.M.P.No.31/Goonda/C2/2019 dated 17.08.2019 passed by the first respondent is set aside. The detenu, namely, Kumaresan, S/o. Mookkan, male, aged 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The District Collector cum District Magistrate,
Office of the Collectorate,
Salem District.
- 2.The Secretary to the Government,
State of Tamil Nadu
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.
- 3.The Superintendent,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.

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A.SK(06/01/2020)

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