

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.2866 of 2018

Selvaraj

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus to call for the records in No.1056/BCDFGISSSV/2018 dated 20.11.2018 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Selvaraj, son of Nagamuthu, aged about 44 years, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner .. Mr.Ilayaraja Kandasamy

For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner himself is the detenu and challenge is made to the order of detention dated 20.11.2018 made in No.1056/BCDFGISSSV/2018, passed by the second respondent under which the detenu has been branded as a 'Goonda' and detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Slum-Grabbers and Video Pirates Act, 1982.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the materials available on record.

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 are totally different. Therefore, the real possibility 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 Selvaraj is in remand in M1 Madhavaram Police Station Cr.No.610/2018, M2 Madhavaram Milk Colony Police Station Cr.No.346/2018 and 347/2018 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for M1 Madhavaram Police Station Cr.No.610/2018, M2 Madhavaram Milk Colony Police Station Cr.No.346/2018 and 347/2018 cases. The sponsoring authority has stated that the relatives of Thiru.Selvaraj are taking action to take him on bail on M1 Madhavaram Police Station Cr.No.610/2018, M2 Madhavaram Milk Colony Police Station Cr.No.346/2018 and 347/2018 cases by filing bail application before the appropriate Court. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M2 Madhavaram Milk Colony Police Station Cr.No.1141/2015 bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3044/2015. Hence I infer that there is real possibility of his coming out on bail in

M1 Madhavaram Police Station Cr.No.610/2018, M2 Madhavaram Milk Colony Police Station Cr.No.346/2018 and 347/2018 cases by filing bail application before the appropriate court, since in similar case bail is granted by the court after a lapse of time....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in M2 Madhavaram Milk Colony Police Station Cr.No.1141/2015 for the offences under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC and bail was granted in CrI.M.P.No.3044/2015 by the Principal District and Sessions Court, Tiruvallur and therefore, there is a real possibility of the detenu coming out on bail 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 under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offence involved in the second adverse case are under Sections 394 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 No.1056/BCDFGISSSV/2018 dated 20.11.2018, passed by the second respondent is set aside. The detenu, namely, Selvaraj, son of Nagamuthu, aged about 44 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai - 600 009.

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

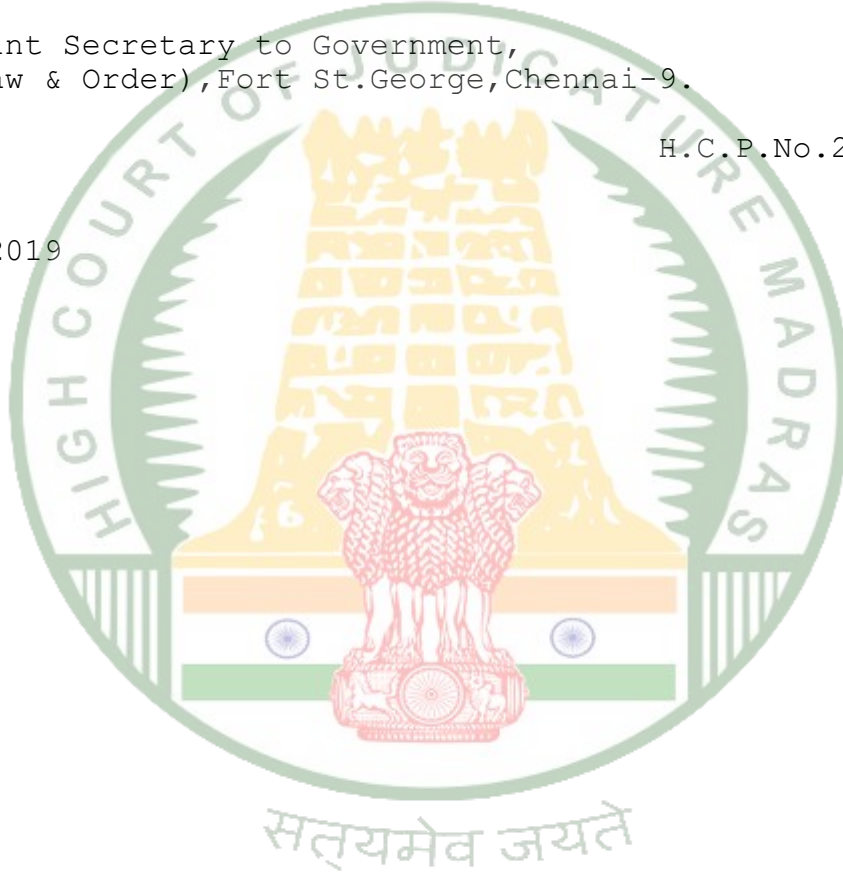
3. The Superintendent,
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government,
Public (Law & Order), Fort St. George, Chennai-9.

H.C.P.No.2866 of 2018

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