

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.3015 of 2018

Anitha

..Petitioner

Vs

1. 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.1063/BCDFGISSSV/2018 dated 23.11.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Prabhu, son of Vijayan, aged about 32 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 is the wife of Prabhu, son of Vijayan, aged about 32 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.1063/BCDFGISSSV/2018 dated 23.11.2018, holding him 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 adverse case is 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..... In a similar case registered in P-3 Vyasarpadi Police Station Cr.No. 828/2017, u/s 147,148,341,294(b),323,307 & 506(ii) IPC bail was granted by the Court of Principal Sessions, Chennai, in Crl.M.P.No. 9467/2017. It is pertinent to note that in a similar case registered at J-1 Saidapet Police Station Crime No. 2303/2015 under Sections 341,384 and 506(ii) IPC bail was granted by the IX Metropolitan Magistrate Court, Saidapet, Chennai - 15, in Crl.M.P.No.2768/2015. Hence, I infer that there is real possibility of his coming out on bail in J-6 Thiruvanniyur Police Station Crime Nos. 1546/2018 and 1548/2018 by filing bail application before the appropriate court, since in similarly placed cases bail is granted by the 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 a similar case registered in Cr.No.828/2017 under Sections 147, 148, 341, 294(b), 323, 307 & 506(ii) IPC, bail was granted by the Court of Principal Sessions Judge, Chennai in Crl.M.P.No.9467/2017 and in Crime No. 2303/2015 under Sections 341,384 and 506(ii) IPC, bail was granted by IX Metropolitan Magistrate Court, Saidapet, Chennai - 15, in Crl.M.P.No.2768/2015 and therefore, there is a real possibility of the detenu coming out on bail in the adverse case and ground case and indulge in such activities prejudicial to the maintenance of public order. The similar cases relied on by the authority were registered for the offences under Sections 147, 148, 341, 294(b), 323, 307 & 506(ii) IPC and 341,384 and 506(ii) IPC whereas the offence involved in the adverse case is under Sections 147, 148 and 307 IPC and in the ground case is under Sections 294(b), 386 and 506(ii) IPC. Therefore, there is

non-application of mind on the part of the detaining authority in not considering the similar cases 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.1063/BCDFGISSSV/2018 dated 23.11.2018, passed by the second respondent is set aside. The detenu, namely, Prabhu, son of Vijayan, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. 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.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George,
Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

LN(CO)

RRS (19/07/2019)

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