

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 23 of 2020

Deepa

.. Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai - 600 009.
2. The State of Tamil nadu
Represented by the District Collector cum
District Magistrate of Vellore,
Vellore District,
Vellore - 9.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the entire records relating to the impugned order of detention passed by the 2nd respondent in C3/D.O.No.108/2019 dated 05.10.2019 and set aside the same and consequently direct the respondents to produce the detenu Suryamoorthy @ Surya petitioner's son now confined at Central Prison, Vellore before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.M.Sivalingam

For Respondents : Mr.R.Prabhavathi Ram
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the mother of the detenu Suriyamoorthy @ Surya, S/o.Moorthy, male, aged 22 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.108/2019 dated 05.10.2019 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 offences 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 Suriyamoorthy @ Suriya, was produced before the Judicial Magistrate, Arakkonam on 09.09.2019 in the ground case in Arakkonam Taluk Police Station Cr.No.406/2019 u/s 302 IPC and was remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 23.09.2019. Further, his remand was extended upto 04.10.2019 and then upto 18.10.2019.

I am aware that Thiru.Suriyamoorthy @ Suriya has not filed a bail application before any court in the ground case in Arakkonam Taluk Police Station Cr.No.406/2019 u/s 302 IPC. As far as the ground case is concerned, in a similar case registered at Kanchi Taluk Police Station Cr.No.15/2016, under Section 147,148,506(ii),302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl.K.Sandhar S/o.Kuppan, and Moses, S/o.Joseph by the Court of Sessions Court - II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.2016. As bails are being granted by courts in such cases, there is most likely of his coming out of bail by filing bail application in any court. If he enlarge himself on bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and public peace."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration in a similar case registered at Kanchi Taluk Police Station Cr.No.15/2016, under Section 147,148,506(ii),302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl.K.Sandhar S/o.Kuppan, and Moses,

S/o. Joseph by the Court of Sessions Court - II, Kanchipuram in Crl.M.P.No.600/2016 on 06.04.2016, 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 147,148,506(ii),302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 whereas the offence involved in the ground case is under Section 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 C3/D.O.No.108/2019 dated 05.10.2019, passed by the second respondent is set aside. The detenu, Suriyamoorthy @ Suriya, S/o. Moorthy, 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

True Copy

Sub-Assistant Registrar

raa/mmi/ssm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai - 600 009.
2. The District Collector cum
District Magistrate of Vellore,
Vellore District,
Vellore - 9.
3. The Joint Secretary to Government
Public (law and order)
Fort. St. George
Chennai 9.
4. The Superintendent,
Central Prison, Vellore.

5. The Public Prosecutor,
High Court, Madras.

H.C.P. No.23 of 2020

AD(CO)
SP(04/08/2020)



WEB COPY