

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.47 of 2020

S.Barana Begum, aged 26 years,
W/o.Sheikh @ Abdul Khader,
No.5, Sarbudin Thottam 2nd Street,
Royapettai,
Chennai - 600 014.

... Petitioner

Vs

1.The Secretary to Government,
Home Prohibition & Excise Department,
Secretariat, Fort St George,
Chennai - 600 009.

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

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the second respondent in his proceedings in Ref.No.828/BCDFGISSSV/2019, dated 02.12.2019 and quash the same as illegal and produce the detenu namely Sheikh @ Abdul Khader, S/o.Mohammed Sali aged 28 years, now he is confined in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

(Order of the court was made by N.KIRUBAKARAN, J.)

The matter is heard through video-conferencing.

2.The Petitioner's husband viz., Sheikh @ Abdul Khader, S/o.Mohammed Sali aged 28 years has been detained under Goondas

Act by virtue of Order dated 02.12.2019 in Ref.No.828/BCDFGISSSV/2019 as there was two adverse cases against him.

3.Heard the learned Counsel appearing for the Petitioner and the learned Additional Public Prosecutor appearing for the respondents.

4.It is seen that the Petitioner's husband had surrendered on 16.10.2019 in a case registered against him and when he was in custody, he was again formally arrested on 04.11.2019. Thereafter, he was detained under Goondas Act on 02.12.2019. Though technically speaking, there is no delay in passing the detention order, the case which has been referred as similar case by the detaining authorities in which the co-accused were granted bail, is not similar in nature.

5.When a case referred by the detaining authority regarding the likelihood of the accused coming out on bail, is not similar in nature, there is non-application of mind on the part of the detaining authorities. In that event, the detention order passed by the second respondent is vitiated. Hence, the detention order has to be necessarily quashed.

6.Accordingly the detention order passed by the second respondent in Ref.No.828/BCDFGISSSV/2019 dated 02.12.2019 is quashed and the Habeas Corpus Petition is allowed. The detenu viz., Sheikh @ Abdul Khader, S/o.Mohammed Sali aged 28 years, who was confined in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

7.During the course of the argument, it is submitted that the accused is presently lodged in Sub Jail, Poonamallee and hence, a copy of the order shall be marked to the Jailor, Sub Jail, Poonamallee.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home Prohibition & Excise Department,
Secretariat, Fort St George,
Chennai - 600 009.

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

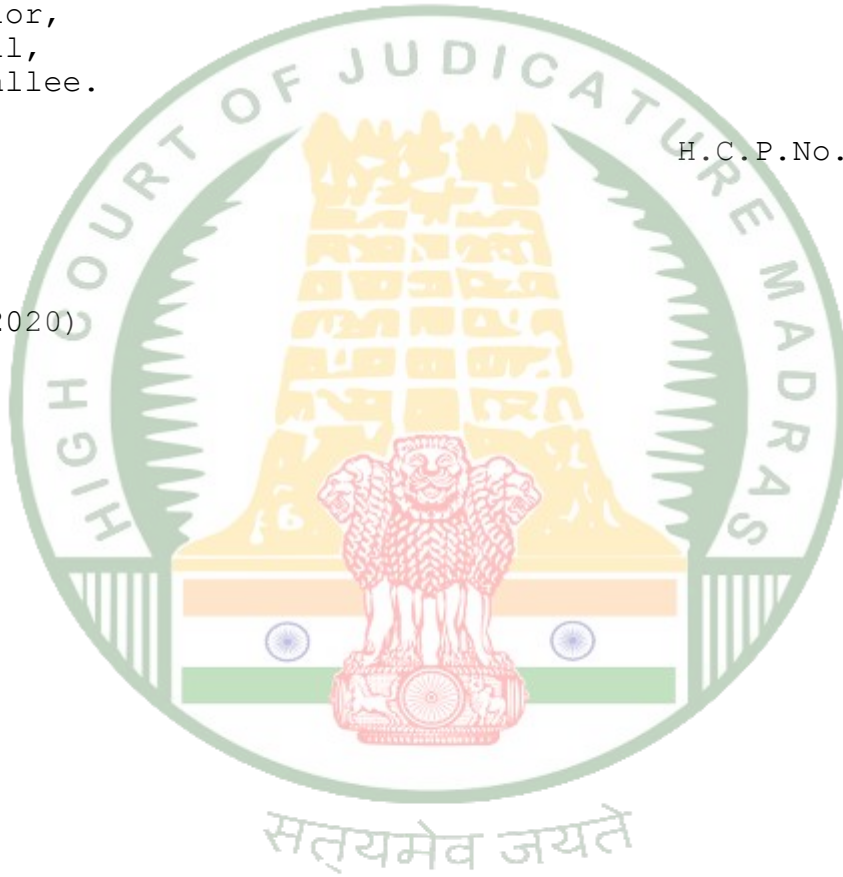
3.The Superintendent of Prison,
Central Prison - I, Puzhal,
Chennai.

4.The Additional Public Prosecutor,
High Court of Madras,
Chennai.

5.The Jailor,
Sub-jail,
Poonamallee.

H.C.P.No.47 of 2020

PP (CO)
GN(03/11/2020)



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