

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2020

Coram

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

H.C.P. No. 168 of 2020

Shanthi

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the records relating to the Detention Order issued by the second respondent in Detention order No. 377 / BCDFGSSSV / 2019 dated 04.07.2019 and quash the same and direct the respondents herein to produce the body of the detenu namely Parthiban S/o. Masilamani, aged about 22 years, the son of the petitioner herein before this Court and set him at liberty from the Central Prison, Puzhal, Chennai forthwith.

For Petitioner : Mr.G.Mageshkumar

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 Parthiban S/o. Masilamani, aged about 22 years, who is the detenu. The detenu has been

detained by the second respondent by his order in No. 377 / BCDFGSSSV / 2019 dated 04.07.2019, holding him to be a "Goondas", 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 fifth adverse case and 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. Parthiban is in remand in T15 SRMC Police Station Crime Nos. 359/2019 and 365/2019. He has not moved any bail application for T15 SRMC Police Station Crime Nos. 359/2019 and 365/2019 so far. The sponsoring authority has stated that the relatives of Thiru Parthiban are taking action to take him out on bail by filing bail application for T15 SRMC Police Station Crime Nos. 359/2019 and 365/2019 before the appropriate Court. In a similar case registered u/s 294(b), 324, 307 and 506(ii) IPC in T3 Korattur Police Station Cr.No. 193/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No. 1232/2018. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 and 506 (ii) IPC in T3 Korattur Police Station Cr.No. 369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No. 3177/2018. Hence I infer that there is real possibility of his coming out on bail in T15 SRMC Police Station Crime Nos. 359/2019 and 365/2019 by filing bail application before the appropriate court since in similarly placed cases bails are granted by 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 the similar case registered u/s 294(b), 324, 307 and 506(ii) IPC in T3 Korattur Police Station Cr.No.193/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.1232/2018 and another similar case registered u/s 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC in T3 Korattur Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018. 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 cases relied on by the authority were registered for the offences under Sections 294 (b), 324, 307 and 506(ii) IPC and 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC whereas the offences involved in the fifth adverse case and ground case are under Sections 294(b) and 307 IPC and 341, 294(b), 323, 427, 336, 392, 397 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. 377/BCDFGSSSV/2019 dated 04.07.2019, passed by the second respondent is set aside. The detenu, Parthiban S/o. Masilamani, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (Writ)

//True Copy//

Sub Assistant Registrar

raa/mmi/ssm

To

1. The Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
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.

H.C.P. No. 168 of 2020

PPA (CO)
GN (07/08/2020)



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