

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. 440 of 2020

Vettaiyan @ Murugan

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
 2. The Commissioner of Police,
Office of the Commissioner of Police,
Salem City.
- .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the entire records connected with the detention order in CMP 52/Goonda/Salem City / 20 on 30.11.2019 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person one named Thiru.Vettaiyan @ Murugan, S/o Palani aged about 26 years now confined at Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Mohamed Saifulla

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

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

The petitioner himself is the detenu. The detenu has been detained by the second respondent by his order in CMP 52/Goonda/Salem City / 20 on 30.11.2019 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 6 of the grounds of detention are extracted below:

"6.I am aware that Thiru.Vettaiyan @ Murugan is in remand in the case of Azhagapuram PS Cr.No.226/2019 u/s 341, 392 r/w 397, 506(ii) IPC and so far no bail petition filed on behalf of him in the above said cases. Further, it is learnt that the relative of Thiru.Vettaiyan @ Murugan is taking efforts to move bail application to take him out on bail in the above said case I am also aware that bail has been granted by the Principal Sessions Judge, Salem in C.M.P.No.346/2019 dated 02.02.2019 for a similar case of Kannankurichi Police Station Cr.No.693/2018 u/s 392 r/w 397 & 506(ii) IPC registered against one Mandai Vijay @ Vijayakumar, who was remanded on 30.12.2018. Hence, I infer that there is a real possibility of his (Thiru.Vettaiyan @ Murugan) coming out on bail by filing bail petition in the above case since bails are granted for similar cases by the concerned Court or the higher Court after efflux of certain time. If Thiru.Vettaiyan @ Murugan comes out on bail in the above case in which he is in remand 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 at Kannankurichi Police Station Cr.No.693/2018 u/s 392 r/w 397 & 506(ii) IPC against one Mandai Vijay @ Vijayakumar, bail has been granted by the Principal Sessions Judge, Salem in C.M.P.No.346/2019 dated 02.02.2019 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 392 r/w 397 & 506(ii) IPC whereas the offences involved in the

ground case are under Sections 341, 392 r/w 397, 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 CMP 52/Goonda/Salem City / 20 on 30.11.2019, passed by the second respondent is set aside. The detenu, Vettaian @ Murugan, S/o Palani aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Salem City.
3. The Superintendent,
Central Prison, Salem.
4. The Joint Secretary to Government,
Public (L&O), Fort St.George, Chennai.
5. The Public Prosecutor,
High Court, Madras.

Nas(co)
krd 28/10

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