

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2050 of 2019

Mahendran ... Petitioner/Father of the Detenu

Vs

1. State of Tamil Nadu,
Rep.by The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.
2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in Memo No.566/BCDFGISSSV/2019 dated 06.09.2019 on the file of the second respondent and quash the same as illegal and consequently direct the respondent to produce Kutty @ Thiagarajan, S/o.Mahendran, aged about 28 years, before this Court who now detained in Central Prison, Puzhal - II and set him at liberty.

For Petitioner : M/s.A.Elumalai

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

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the father of the detenu viz., Kutty @ Thiagarajan, S/o.Mahendran, aged 28 years, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in 566/BCDFGISSSV dated 06.09.2019.

2. The detenu came to adverse notice in the following cases:

Sl.No.	Police Station and Crime No.	Section of Law
1.	B2 Esplanade Police Station Cr.No.125 of 2019	379 IPC
2.	C1 Flower Bazaar Police Station Cr.No.202 of 2019	379 IPC
3.	C3 Seven Wells Police Station Cr.No.161 of 2019	379 IPC

The alleged ground case has been registered against the detenu in Crime No.162 of 2019 on the file of C3 Seven Wells Police Station for offences u/s.341, 294(b), 336, 427, 397 & 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4. Learned counsel for petitioner submits that despite the admitted position that the detenu has filed bail application in the ground case, the detaining authority has taken into consideration the similar case registered u/s 341, 294(b), 323, 336, 427, 392, 397 & 506(ii) IPC bail was granted by learned Principal Sessions Judge, Chennai in CrI.M.P.No.3480 of 2019 in respect of Crime No.78 of 2019 on the file of N1 Royapuram Police Station. The similar case relied on by the authority was registered for the offences u/s 341, 294(b), 323, 336, 427, 392, 397, & 506(ii) IPC, N1 Royapuram Police Station Cr.No.78 of 2019 whereas the offences involved in the adverse cases and ground case are under Sections 341, 294(b), 336, 427, 397 & 506(ii) IPC. Learned counsel submits that in the case cited as similar, the offences are different from that of the offences in the ground case. The non-consideration of such aspect reflects non-application of mind.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. As rightly submitted by learned counsel for petitioner, the offences alleged in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, are different from that of the offences alleged in the ground case. Hence, we find that the order of detention

suffers from non application of mind.

7. Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Kutty @ Thiagarajan, S/o.Mahendran, in No.566/BCDFGISSSV/2019 dated 06.09.2019, is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.
- 3.The Superintendent, Central Prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Govt.,
Public (Law & Order),
Fort St.George, Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2050 of 2019

PA(CO)
CB(10/03/2020)

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