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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.05.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Ms. Justice P.T.ASHA

H.C.P. No.2096 of 2019

Preethi

... Petitioner

-vs-

1.The State of Tamilnadu,
Rep.by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Chennai City Police,
Greater Chennai,
Commissioner Office, 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 in No.380/BCDFGISSSV/2019 dated 05.07.2019 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Durairaj, son of Thambidurai, aged about 32 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner .. Mr.M.Manivelan
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 Durairaj, male, aged 32 years, S/o.Thambidurai, who is the detenu. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.380/2019 dated 05.07.2019, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of the 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 4 of the grounds of detention are extracted below:

"4. I am aware that Thiru. Durairaj is in remand in J-11 Kannagi Nagar Police Station Crime No. 273/2019 and he has not moved any bail application for J11 Kannagi Nagar Police Station Crime No. 273/2019 so far. The sponsoring authority has stated that Thiru. Durairaj's relatives are taking action to take him out on bail in J11 Kannagi Nagar Police Station Crime No. 273/2019 by filing bail application before the appropriate Court. In a case registered in W4 All women Police Station Cr. No. 03/2018 u/s 10 of the Protection of Children from Sexual Offences Act, 2012, 506(ii) IPC bail was granted by the Court of Sessions Judge, Mahila Court, Chennai in Crl. M.P. No. 18753/2018. Hence, I infer that there is real possibility of his coming out on bail in J11 Kannagi Nagar Police Station Crime No. 273/2019 by filing bail application before the appropriate court, since in similarly placed cases bail is 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 in W4 All women Police Station Cr. No. 03/2018 u/s 10 of the Protection of Children from Sexual Offences Act, 2012, 506(ii) IPC bail was granted by the Court of Sessions Judge, Mahila Court, Chennai in Crl. M.P. No. 18753/2018 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 Section 10 of the Protection of Children from Sexual Offences Act, 2012, 506(ii) IPC whereas the offence involved in the ground case is under Section 10 of the Protection of Children from Sexual Offences Act, 2012. 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 BCDFGISVV No.380/2019 dated 05.07.2019, passed by the second respondent is set aside. The detenu, namely, Durairaj, male, aged 32 years, S/o.Thambidurai, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ms

To

- 1.The Secretary to Government,
State of Tamilnadu,
Department of Prohibition and Excise (Home),
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Chennai City Police,
Greater Chennai,
Commissioner Office, Vepery,
Chennai - 600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Government, Public (Law & Order),
Fort St.George, Chennai-9.



5.The Public Prosecutor,
High Court, Madras.

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