

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

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

H.C.P.No.2146 of 2019

Usha

... Petitioner

Vs

1. The Secretary to the Government
Home Prohibition and Excise Department,
Secretariat,
Chennai 600 009.

2. District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.

... 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 connection with the order of Detention passed by the second respondent dated 25.08.2019 in BCDFGISSSV No.53/2019 against the petitioner cousin son Ganesan @ Manikandan, male aged 22 years s/o.Venkatachalam, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : M/s.S.Senthilvel

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 aunt of the detenu viz., Ganesan @ Manikandan, S/o.Venkatachalam, aged 22 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 BCDFGISSSV/53/2019 dated 25.08.2019.

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

Sl.No.	Police Station and Crime No.	Section of Law
1.	Neelankarai Police Station Cr.No.213 of 2018	379 IPC

The alleged ground case has been registered against the detenu in Crime No.158 of 2019 on the file of Otteri Police Station for offences u/s.147, 148, 341, 448, 307, 302 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 not filed any bail application in the ground case, the detaining authority has informed a real possibility of his coming out on bail by filing a bail application since in a similar case bail was granted by learned District and Sessions Court II, Kancheepuram, in C.M.P.No.1933 of 2015 in respect of Crime No.1179 of 2015 on the file of Vishnu Kanchi Police Station, for offences u/s.147,148,302 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., Ganesan @ Manikandan, S/o.Venkatachalam, in No.BCDFGISSSV No.53/2019 dated 25.08.2019, 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)

//True Copy//

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Sub Assistant Registrar

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To

1. The Secretary,
Prohibition and Excise Department,
Fort.St.George,
Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai Police,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.
- 5.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
6. The Superintendent,Central Prison,Puzhal,Chennai.

A.SK(05/03/2020)

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