

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020
CORAM

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

H.C.P.No.2207 of 2019

Surya

... Petitioner

Vs

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

2. The Commissioner of Police,
Greater Chennai,
Chennai.

... 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 12.09.2019 in No.593/BCDFGISSSV/2019 against the brother of the petitioner Settu @ Karthikeyan, male, age 31 S/o.Sekar, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : M/s.K.S.Kaviarasu
For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

सतयमेव जयते
O R D E R

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

Petitioner is the brother of the detenu viz., Settu @ Karthikeyan, S/o.Sekar, aged 31 years, who has been branded as a 'Drug Offender' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in No.593/BCDFGISSSV/2019 dated 12.09.2019.

2. The alleged ground case has been registered against the detenu on in Crime No.280 of 2019 on the file of P-4 Basin Bridge Police Station for offences u/s.8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 r/w 34 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 Principal Special Judge, EC & NDPS Court, Chennai, in CrI.M.P.No.662 of 2018 in respect of Crime No.327 of 2018 on the file of P-4, Basin Bridge Police Station, for offences u/s.8(c) r/w 20(b) (ii) (B) of NDPS Act 1985. 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., Settu @ Karthikeyan, S/o.Sekar, in Memo No.593/BCDFGISSSV/2019 dated 12.09.2019, 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.

-s/d-

सत्यमेव जयते
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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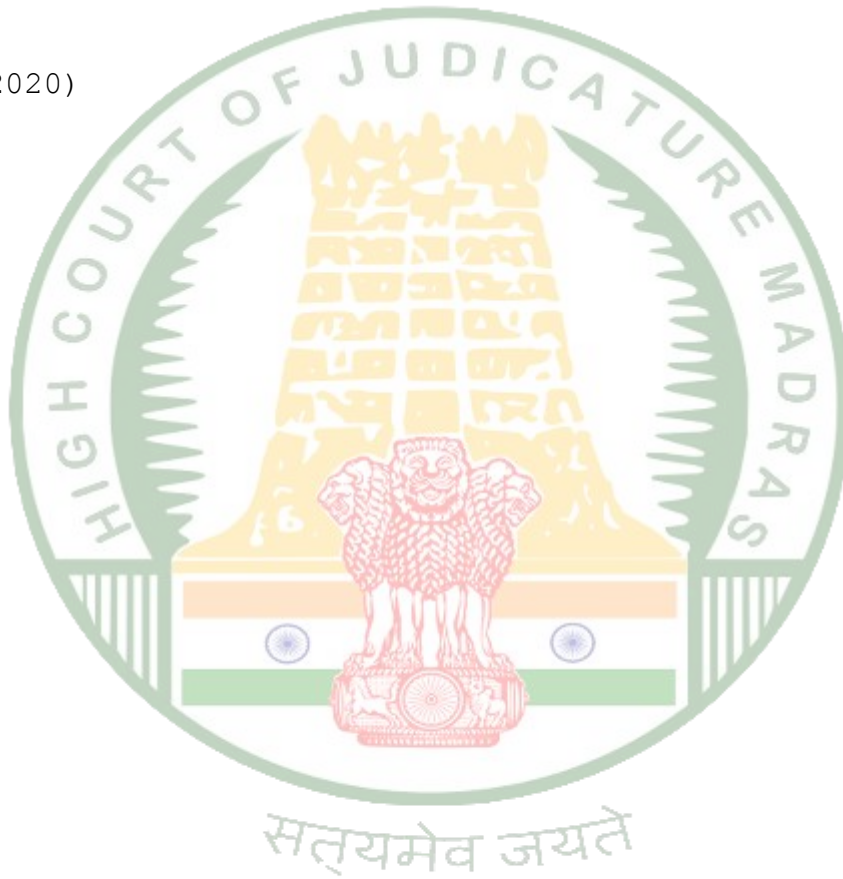
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3. The Public Prosecutor,
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BP (CO)
SP(28/02/2020)



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