

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2020
CORAM
THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

H.C.P.No.2492 of 2019

Rose Rani
W/o.Mariadoss

...Petitioner/Sister of the detenue

versus

1.State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

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

...

Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed in No.556/BCDFGISSSV/2019 dated 29.08.2019 passed by the second respondent and set aside the same and directing the respondents to produce the petitioner's brother by name Naresh @ Naresh Kumar, aged about 26 years, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.K.Thenrajan

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

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

The petitioner herein is the brother of the detenu, namely, Naresh @ Naresh Kumar, aged about 26 years, has filed this petition, challenging the order of detention passed by the second respondent in No.556/BCDFGISSSV/2019 dated 29.08.2019, branding him as a "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders,

Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

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

Sl. No.	Police Station and Crime No.	Section of law
1.	M5 Ennore Police Station, Crime No.405/2019	353, 506(ii) & 307 IPC

The alleged ground case has been registered against the detenu in Crime No.404 of 2019 on the file of M5 Ennore Police Station for offences under Sections 341, 294(b), 506(ii) r/w 302 IPC. Aggrieved by the order of detention, the present Habeas Corpus Petition has been filed.

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

4. Learned counsel for the petitioner submits that though the bail application filed by the detenu is pending, the detaining authority has informed a real possibility of the detenu coming out on bail by filing another bail application since in a similar case bail was granted by learned Principal Sessions Judge, Chennai, in CrI.M.P.No17395 of 2014 in respect of Crime No.809 of 2014 on the file of F1 Chintadripet Police Station for offences under Sections 147, 148, 341, 307 and 302 IPC. Learned counsel submits that in the case cited as similar, the offences alleged under Indian Penal Code are different from that of the offences alleged 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, in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, the offences alleged under Indian Penal Code 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., Naresh @ Naresh Kumar, aged about 26 years, in No.556/BCDFGISSSV/2019 dated 29.08.2019, is set aside. 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-IV)

//True Copy//

Sub Assistant Registrar

sri

To

- 1.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, chennai 9
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.2492 of 2019

MR(CO)

GN(16/07/2020)

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