

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2020

Coram

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

H.C.P.No.2341 of 2019

C.Sankar ..Petitioner/Father of detenu

-vs-

- 1.The Secretary to the Government
of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore, Cuddalore District. ... Respondents/Respondent

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in Memo No: C3/D.O./74/2019 on the file of the second respondent, quash the detention order dated 28.09.2019 and direct the respondent to produce of detenu Muthamizhan Son of Sankar detained at the Central Prison, Cuddalore, under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner .. Mr.P.K.Ganesh
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 father of the detenu, Muthamizhan, S/o. Sankar, male, aged 23 years. The detenu has been detained by the second respondent by his order in C3/D.O./74/2019 dated 28.09.2019 holding to be a "Goonda", as contemplated under Section 2(f) of 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 Government Advocate appearing for the respondents. We have perused the materials available on record.

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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru. Muthamizhan, S/o. Sankar has been remanded in judicial custody upto 04.10.2019 and lodged at Sub Jail, Cuddalore in connection with Annamalai Nagar Police Station Cr.No.227/2019 u/s 341, 294(b), 326(A), 307 IPC. I am aware that he has already filed a bail application before the Court of District Sessions Judge, Cuddalore on 19.09.2019 and the same was dismissed on 23.09.2019 in Crl.M.P.No.5837/2019. In a similar case in Chidambaram P.S.Cr.No.62/2019 Sec 341, 294(b) & 307 IPC bail was granted to the accused by the Court of District Sessions Judge, Cuddalore in Crl.M.P.No.2055/2019 on 27.03.2019. Hence, I infer that there is very likelihood of his (Thiru.Muthamizhan) coming out on bail in Annamalai Nagar Police Station Cr.No.227/2019 since bail is granted by courts in such cases. 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 a similar case registered at Chidambaram P.S.Cr.No.62/2019 Sec 341, 294(b) & 307 IPC bail was granted to the accused by the Court of District Sessions Judge, Cuddalore in Crl.M.P.No.2055/2019 on 27.03.2019 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 u/s 341, 294(b) & 307 IPC whereas the offences involved in the ground case are 341, 294(b), 326(A) and 307 IPC. 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 C3/D.O./74/2019 dated 28.09.2019, passed by the second respondent is set aside. The detenu, namely, Muthamizhan, S/o. Sankar, male, aged 23 years, 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 the Government
of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore, Cuddalore District.
3. The Joint Secretary to Govt.
Public (law & order),
Fort St.George, Chennai-9.
- 4 .The Superintendent,
Central Prison, Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

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PP (CO)
RMP (20/07/2020)

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