

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM

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

H.C.P.No.2340 of 2019

B.Mohanavalli  
W/o.Balaji

.... Petitioner

Vs

1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 600009.

2.The Commissioner of Police,  
Greater Chennai,  
Vepery, Chennai - 600007.

3.The Inspector of Police,  
S-12, Chitlapakkam Police Station,  
Chitlapakkam,  
Chennai.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records relating to the impugned order of detention passed by second respondent in Memo No.614/BCDFGISSSV/2019 dated 23.09.2019 and set aside the same, consequently, direct the respondent to produce the detenu viz., S.Balaji, Male, aged 45 years, S/o.Sarangapani, No.76, V.G.P.Saravana Nagar, 4<sup>th</sup> Street, Madambakkam, Chennai, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.Jawahar

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 wife of the detenu viz. S.Balaji S/o.Sarangapani, aged 45, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Memo No.614/BCDFGISSSV/2019 dated 23.09.2019.

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

| Sl. No. | Police Station and Crime No.                        | Section of Law |
|---------|-----------------------------------------------------|----------------|
| 1.      | S-12 Chitlapakkam Police Station, Crime No.572/2019 | 394 IPC        |
| 2.      | S-12 Chitlapakkam Police Station, Crime No.573/2019 | 392 IPC        |

The alleged ground case has been registered against the detenu in Crime No.574 of 2019 on the file of S-12 Chitlapakkam Police Station for offences u/s.341, 294(b), 392, 397, 336 and 506(ii) 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 the detaining authority has informed a real possibility of the detenu coming out on bail since in a similar case bail was granted by learned Principal District and Sessions Judge, Kancheepuram, in CrI.M.P.No.336 of 2018 in respect of Crime No.47 of 2018 on the file of S-15 Selaiyur Police Station for offences u/s.341, 294(b), 392, 397, 336, 427 and 506(ii) IPC. Learned counsel submits that in the case cited as similar, offence u/s.427 IPC was alleged, whereas in the ground case such offence has not been alleged. 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, offence u/s.427 IPC was alleged, whereas in the ground case such

offence has not been alleged. Hence, we find that the order of detention suffers from non-application of mind.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., S.Balaji S/o.Sarangapani, aged 45, in Memo No.614/BCDFGISSSV/2019 dated 23.09.2019, 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-VI)

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 600009.
- 2.The Commissioner of Police,  
Greater Chennai,  
Vepery, Chennai - 600007.
- 3.The Inspector of Police,  
S-12, Chitlapakkam Police Station,  
Chitlapakkam  
Chennai.
- 4.The Superintendent,  
Central Prison,  
Puzhal, Chennai.
5. The Joint Secretary to Government  
Public (Law and Order) Department,  
Fort St George, Chennai-9
- 6.The Public Prosecutor,  
High Court, Madras.

H.C.P.No.2340 of 2019

SJ(CO)  
GMY(19/03/2020)