

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

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

H.C.P.No.2364 of 2019

Usha
W/o.Mohandoss

... Petitioner

Vs

1.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600007.

2.The Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St.George, Chennai - 9. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records relating to the impugned order in Memo No.616/BCDFGISSSV/2019 dated 23.09.2019 on the file of first respondent herein and set aside the same as illegal and direct the respondents to produce the detenu viz., Mohandoss S/o.Kalidoss,

Hindu, aged about 45 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Suresh
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. Mohandoss S/o.Kalidoss, aged 45, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of first respondent passed in Memo No.616/BCDFGISSSV/2019 dated 23.09.2019.

2. The alleged ground case has been registered against the detenu in Crime No.413 of 2019 on the file of P-3 Vyasarpadi Police Station for offences u/s.147, 148, 341, 294 (b), 336, 302 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 Sessions Judge, Chennai, in CrI.M.P.No.17395 of 2014 in respect of Crime No.809 of 2014 on the file of F-1 Chintadripet Police Station for offences u/s.147, 148, 341, 307 @ 302 IPC. Learned counsel submits that in the case cited as similar, offences u/s.294(b), 336 and 506 (ii) IPC were not present, whereas in the ground case such offences also 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, some of the offences alleged in the ground case were not present. 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 first respondent against the detenu viz., Mohandoss S/o.Kalidoss, aged 45, in Memo No.616/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.

WEB COPY Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gm
To

1.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery, Chennai - 600007.

2.The Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

3.The Superintendent,
Central Prison,
Puzhal, Chennai - 600066.

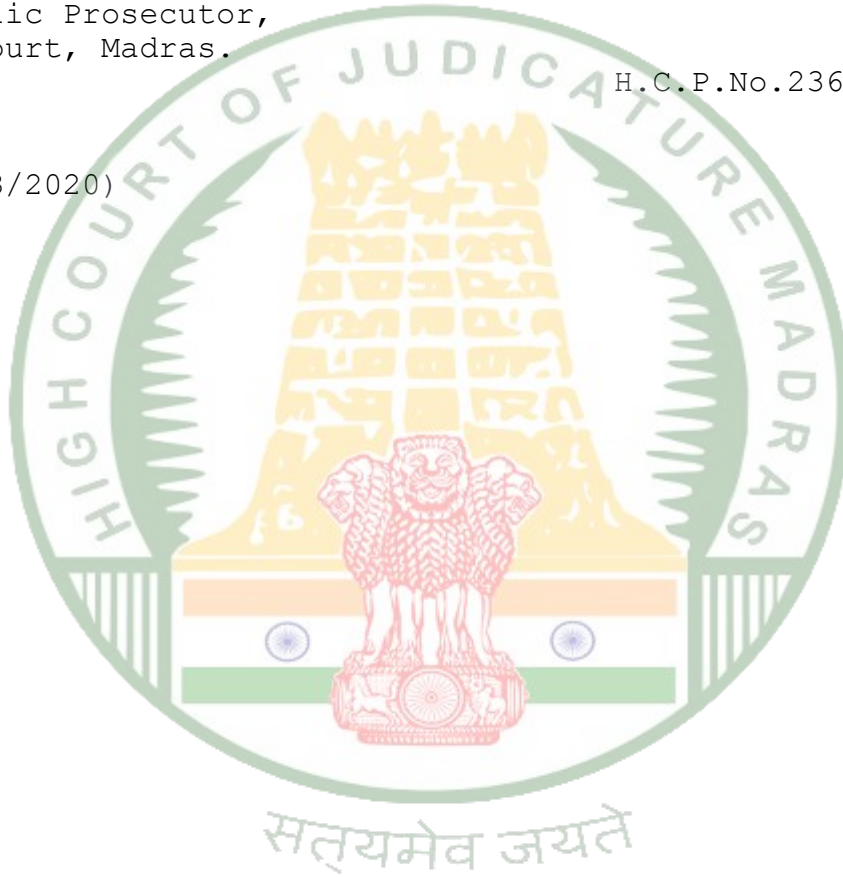
4.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2364 of 2019

MG

A.SK(17/03/2020)



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