

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

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

H.C.P.NO.2374 OF 2019

Saroja
W/o.Pichandi

... Petitioner

Vs

1. The State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2. District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.

... 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 leading to the detention of petitioner's son viz., Vijayakumar @ Viji S/o.Pichandi, male, aged about 23 years, presently lodged at Central Prison, Puzhal, Chennai, detained under Act 14/82 as a "Goonda" vide detention order dated 17.09.2019 on the file of second respondent herein, made in BCDFGISSSV No.58/2019 and quash the same and consequently, direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter, set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Rajavelu

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 mother of the detenu viz. Vijayakumar @ Viji S/o.Pichandi, aged 23, who has been branded as a 'Goonda'

under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.58/2019 dated 17.09.2019.

2. The detenu came to adverse notice in Crime No.271/2018 on the file of Baluchettychatram Police Station for offences u/s.341, 147, 148, 294(b), 323, 307 IPC r/w 149 and 109 IPC. The alleged ground case has been registered against the detenu in Crime No.286 of 2019 on the file of Baluchettychatram Police Station for offences u/s.147, 148, 448, 307, 302, 506(ii) IPC r/w 3(1) of Tamil Nadu Property (Prevention of Damages & Loss) Act, 1992. 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 no bail application has been moved by the detenu 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 District and Sessions Court-II, Kancheepuram, in C.M.P.No.94 of 2014 in respect of Crime No.727 of 2013 on the file of Kanchi Taluk Police Station for offences u/s.147, 148, 120-B and 302 IPC. Learned counsel submits that in the case cited as similar, the case was registered only for offences under IPC whereas the ground case has been registered for offences under IPC as well as Tamil Nadu Property (Prevention of Damages & Loss) Act, 1992. 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, offences are different from that of the ground case. 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., Vijayakumar @ Viji S/o.Pichandi, aged 23, in BCDFGISSSV No.58/2019 dated 17.09.2019, 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 V)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
2. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
3. The Superintendent,
Central Prison,
Puzhal, Chennai - 600066.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (L & O), Fort St.George,
Chennai.

H.C.P.No.2374 of 2019

SJ(CO)
CS/10/03/2020