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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

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

H.C.P.No.2405 of 2019

Bhavani
W/o.Harikrishnan @ Hari ... Petitioner/Wife of the Detenue

Vs

1. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
2. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram. ... Respondents/Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of detention order made in BCDFGISSSV No.71/2019 dated 16.10.2019 passed by second respondent herein against the petitioner's husband viz., Harikrishnan @ Hari S/o.Varadhan, aged 26 years, who is now confined at Central Prison, Vellore and set aside the same and produce him before this Court and set him at liberty.

For Petitioner : Ms.S.Sumathi
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. Harikrishnan @ Hari S/o.Varadhan, aged 26, 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.71/2019 dated 16.10.2019.



2. The detenu came to adverse notice in Crime No.135/2019 on the file of Vishnu Kanchi Police Station for offences u/s.147, 148, 294(b), 323, 324, 506(ii) and 307 IPC. The alleged ground case has been registered against the detenu in Crime No.397 of 2019 on the file of Walajabad Police Station for offences u/s.294(b), 397, 307, 341, 336, 506(ii) IPC and 3(1) of Tamil Nadu Property (Prevention of Damage & 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 though the bail application filed by the detenu was dismissed, 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 District and Sessions Judge II, Kancheepuram, in C.M.P.No.46 of 2015 in respect of Crime No.688 of 2014 on the file of Siva Kanchi Police Station for offences u/s.294(b), 324, 307, 392 and 397 IPC r/w 3(1) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. 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.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Harikrishnan @ Hari S/o.Varadhan, aged 26, in BCDFGISSSV No.71/2019 dated 16.10.2019, 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.

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Sd/-
Assistant Registrar(AD I)MDU

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
2. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2405 of 2019

NMI (CO)
KKV/18/06/2020