

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

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

H.C.P.No.2445 of 2019

Jayaseeli Muthu  
W/o.Muthu

... Petitioner

Vs

1.State represented by  
Commissioner of Police,  
Greater Chennai Police,  
Chennai.

2.The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai.

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by first respondent herein vide order dated 30.09.2019 in Memo No.625/BCDFGISSSV/2019 against petitioner's son/detenu viz., Edwin Christopher S/o.Muthu, aged 40 years, confined at Central Prison, Puzhal, Chennai and set aside the same and consequently, direct the respondents to produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.N.R.Elango, senior counsel  
for Mr.E.Raj Thilak

For Respondents: Mr.R.Prathap Kumar  
Additional Public Prosecutor

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O R D E R

[Order of this Court was made by R.SUBBIAH, J]  
Petitioner is the mother of the detenu viz. Edwin Christopher S/o.Muthu, aged 40, 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.625/BCDFGISSSV/2019 dated 30.09.2019.

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

| Sl. No. | Police Station and Crime No.            | Section of Law              |
|---------|-----------------------------------------|-----------------------------|
| 1.      | Central Crime Branch, Crime No.60/2014  | 406, 420 and 506(ii) IPC    |
| 2.      | Central Crime Branch, Crime No.135/2019 | 153, 469 and 505(1) (b) IPC |

The alleged ground case has been registered against the detenu in Crime No.464 of 2019 on the file of S14 Peerankaranai Police Station for offences u/s.448 & 506 (i) IPC r/w 4 of TNPPDL Act, 1992. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned senior counsel appearing for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4. Learned senior counsel appearing for petitioner submits that the allegations levelled in the adverse cases, at the worst, is only a law and order problem. But, the detaining authority, without looking into such aspect, has come to the conclusion that there is a compelling necessity to detain the detenu in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982. Learned senior counsel further 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 Crl.M.P.No.7478 of 2019 in respect of Crime No.58 of 2019 on the file of Central Crime Branch for offences u/s.120(B) r/w 406, 419 and 420 IPC @ 120(B) r/w 406, 419, 420, 467, 468 and 471 IPC @ 120(B) r/w 406, 419, 420, 467, 468 and 471 IPC r/w 66A of Information Technology Act, 2008. Learned senior counsel submits that in the case cited as similar, offence under the Information Technology Act was alleged, whereas in the ground case offence under such Act has not been alleged. The non-consideration of such aspect reflects non-application of mind.

5. Learned Additional Public Prosecutor appearing for respondents, relying on the counter, submits that the allegations levelled in the adverse cases would certainly affect maintenance of public order and therefore, it cannot be said that the detaining authority arrived at a subjective satisfaction without application of mind. Submitting as above, learned Additional Public Prosecutor strongly objects to release the detenu.

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 under Information Technology Act was alleged, whereas in the ground case offence under such Act 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 first respondent against the detenu viz., Edwin Christopher S/o.Muthu, aged 40, in Memo No.625/BCDFGISSSV/2019 dated 30.09.2019, 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(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Police,  
Greater Chennai Police, Chennai.
  - 2.The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai.
  - 3.The Superintendent,  
Central Prison,  
Puzhal, Chennai.
  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.2445 of 2019
- A.SK(17/03/2020)