

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

H.C.P.No.2469 of 2019

Maragatham
W/o.Kathirvel Murugan

... Petitioner

Vs

1. The Commissioner of Police,
Greater Chennai, Chennai Police,
The office of the Commissioner of Police,
Vepery, Chennai - 600007.

2. The Government of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

... 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 first respondent culminating with the order of detention bearing Memo No.701/BCDFGISSSV/2019 dated 22.10.2019 passed by first respondent herein detaining petitioner's husband viz. Kathirvel Murugan under Act XIV of 1982 and quash the same and direct the respondents to produce the body of the person of the detenu viz., Kathirvel Murugan S/o.Rathinasamy Nadar, Male, aged about 46 years, before this Court, now detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.P.Shivaraj Mohan

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. Kathirvel Murugan S/o.Rathinasamy Nadar, aged 46, 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.701/BCDFGISSSV/2019 dated 22.10.2019.

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

Sl.No.	Police Station and Crime No.	Section of Law
1.	Guduvanchery Police Station, Cr.No.598/2019	294(b), 353, 506(i) IPC r/w 24(i) of Cigarette and other Products of Tobacco Act, 2003
2.	T-13 Kundrathur Police Station, Cr.No.1143/2019	24(1) of Cigarette and other Products of Tobacco Act, 2003 r/w 328 IPC

The alleged ground case has been registered against the detenu in Crime No.1172 of 2019 on the file of T-13 Kundrathur Police Station for offences u/s.341, 294(b), 336, 427, 397 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 despite informing that the bail application of 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 Principal District and Sessions Judge, Tiruvallur, in Crl.M.P.No.3177 of 2018 in respect of Crime No.369 of 2018 on the file of M-4 Red Hills Police Station for offences u/s.341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. Learned counsel submits that in the case cited as similar, offence u/s.392 IPC was alleged whereas in the ground case, such offence is not present. 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.392 IPC was alleged whereas in the ground case, such offence is 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., Kathirvel Murugan S/o.Rathinasamy Nadar, aged 46,

in Memo No.701/BCDFGISSSV/2019 dated 22.10.2019, 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1. The Commissioner of Police,
Greater Chennai, Chennai Police,
The office of the Commissioner of Police,
Vepery, Chennai - 600007.
2. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government, Law & Order,
Fort.St.George, Chennai.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2469 of 2019

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