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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2436 of 2019

V.Muniyappan, M/49,
S/o.Venkatasamy,
D.No.1/6, Jinjupalli,
Billanakuppam Post,
Krishnagiri Taluk,
Krishnagiri District.

... Petitioner

-VS-

State Rep.By:

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 9.

2.The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records in S.C.No.26/2019 dated 30.10.2019 on the file of the District Collector and District Magistrate, Krishnagiri District, Krishnagiri, the second respondent herein and quash the same as illegal and direct the respondent to produce the detainee Agarnivash, S/o.Muniyappan aged about 22 years, now confined at Central Prison, Salem.

For Petitioner :Mr.R.Sankarasubbu
for Mr.S.Rajanikanth

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



O R D E R

(Order of the Court was delivered by N.KIRUBAKARAN, J.)

WEB COPY The petitioner's son viz., Agarnivash, aged about 22 years has been detained under Goondas Act by virtue of detention order in S.C.No.26/2019 passed by the 2nd respondent. The said order is being challenged before this Court.

2.Heard Mr.R.Sankarasubbu, learned counsel appearing on behalf of the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor.

3.According to the learned counsel appearing on behalf of the petitioner, when the petitioner's son was already in judicial custody in the ground case in which he was arrested on 16.09.2019, he was shown as arrested in an adverse case on 27.09.2019. A bail petition had been filed in the ground case and the same has been dismissed. Therefore, the imminent possibility of the detenu coming out on bail is ruled out and this point has not been considered by the detaining authority. Further he would submit that the detaining authority considered the case of a juvenile co-accused who was released on bail. However, he is not similarly placed and there is non application of mind on the part of the detaining authority and therefore, he would seek setting aside the impugned order of detention.

4.The learned Additional Public Prosecutor would defend the detention order stating that the detaining authority had considered all the aspects and passed the detention order and already four adverse cases are pending against the petitioner's son and one ground case in Krishnagiri Taluk Police Station in Cr.No.509 of 2019, u/s.436, 506(ii) of IPC is pending against the petitioner's son.

5.It is evident from the detention order that in the ground case the detenu had been arrested on 16.09.2019 and his judicial custody had been extended till 05.11.2019 and in the adverse case registered in Cr.No.486 of 2019 he was arrested on 27.09.2019. The bail petition filed by the petitioner's son has been dismissed by the trial Court in respect of the ground case. Therefore, there is no imminent possibility of the detenu coming out on bail, especially when the bail petition has been dismissed and the detention order is vitiated. Hence, this petition is liable to be allowed.

6.Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent on 30.10.2019 in SC.No.26/2019 is hereby set aside. The detenu, viz., Mr.Agarnivash, S/o.Mr.Muniyappan, Aged about 22 years,



who is now confined at Central Prison, Salem is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 9.

2.The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.

3.The Superintendent,
Central Prison, Salem

4.The Public Prosecutor,
High Court,
Madras 104.

5.The Section Officer,
Criminal Section,
High Court, Madras-104.

H.C.P.No.2436 of 2019

VSN II (CO)
CB(09/07/2020)