

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.2527 of 2019

Mariyam

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai Police,
Chennai.

3. The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records of the detention order dated 01.10.2019 in detention order BCDFGISSSV No.631 of 2019, on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu viz., Jameel Ahamed, Muslim aged about 22 years S/o.Ahamed Kabir who is now confined in Central Prison, Puzhal, Chennai before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Thamarai Selvan

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

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The petitioner's son has been branded as 'Goonda' under Tamil Nadu Goondas Act 14 of 1982 by virtue of order dated

01.10.2019 passed by the second respondent and he has been detained at Central Prison, Puzhal, Chennai and the said order is challenged before this Court.

2.Heard Mr.R.Thamarai Selvan, learned Counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

3.The learned Counsel for the petitioner would submit that there are three adverse cases and one ground case registered against the petitioner's son and he was arrested on 04.09.2019 for the said cases. There is no bail petition pending in respect of three adverse cases and only in the ground case, bail petition is pending and there is no possibility for the detenu to come out on bail. Further, the two cases referred in the detention order are not similar cases as ground case as one of the cases consists of bailable offence which shall be tried by Magistrate Court and the other case consists of offence which varies from the offence of the ground case and it will be tried by Sessions Court and hence, the petitioner has got bail in the said two cases. Therefore, the learned Counsel for the petitioner submitted that the detention order passed by the second respondent is vitiated and sought for allowing this petition.

4.However, the learned Additional Public Prosecutor submitted that there is a bail petition pending with regard to the ground case and there is a possibility for the petitioner's son for coming out on bail and justified the detention order. Hence, the learned Additional Public Prosecutor supported the detention order passed by the second respondent and sought for dismissal of this petition.

5.On perusal of the detention order, it is clear that there are three adverse cases and one ground case registered against the petitioner and he was arrested on 04.09.2019 for the said cases and admittedly, bail petition was filed in the ground case and the same is pending and there are no bail petitions pending in the adverse cases. Further, it is seen that two cases were referred in the detention order in which the petitioner has already got bail and stated that there is a possibility for the petitioner's son to come out on bail.

6.However, as rightly pointed out by the learned Counsel for the petitioner, out of the two referred cases, one case consists of bailable offence and the case shall be tried by a Magistrate Court and the other cases consists of offence viz., 341, 294(b), 336, 323, 427, 397 and 506(ii) of IPC which shall be tried by a Sessions Court whereas in the ground case in addition to the above said Sections, 147 & 148 of Indian Penal Code were

registered against the detenu. Hence, the referred cases are not similar cases and therefore, the detention order passed by the second respondent is vitiated and this Petition is allowed.

7. Accordingly, the detenu viz., Jameel Ahamed, aged about 22 years S/o. Ahamed Kabir who is now confined in Central Prison, Puzhal, Chennai is set at liberty.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai Police,
Chennai.
3. The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai.
4. The Additional Public Prosecutor,
High Court of Madras, Chennai.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Joint Secretary to Government,
Public (law & Order), Fort Saint George,
Chennai 9

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SS(CO)
GN(25/06/2020)