

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Ms. Justice P.T.ASHA

H.C.P. No.2643 of 2019

Lakshmi

... Petitioner

-vs-

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

2.The Commissioner of Police (Greater Chennai)
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai District. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 29.07.2019 on the file of the second respondent in pursuance of his order No.443/BCDFGISSSV/2019 and quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely Thiru.Yakob, S/o.Jeeva, aged 22 years, before this Court, and set the petitioner's husband at liberty from detention, now detained at Central Prison-II, Puzhal at Chennai, and set him at liberty.

For Petitioner .. M/s.T.Meganathan
For Respondents .. Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of Thiru.Yakob, S/o.Jeeva, male, aged 22 years, who is the detenu. The detenu has been detained by the second respondent by his order No.443/BCDFGISSSV/2019 dated 29.07.2019, holding him to be a "Goonda", as contemplated under the provisions of Section 2(f) of Tamil Nadu Act 14 of

1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents. We have perused the materials available on record.

3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the second adverse case and the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru. Yakob is in remand in T-15 SRMC Police Station Crime Nos.387/2019, 389/2019 and 390/2019 and he has filed a bail petition in T-15 SRMC P.S.Cr.No.389/2019 before the Court of Judicial Magistrate No.1, Poonamallee in Crl.M.P.No.3588/2019 and the bail was granted. Now he is in Central Prison, Puzhal, Chennai. He has filed bail petition in T-15 SRMC P.S.Cr.No.390/2019 before the Court of Principal Sessions Judge at Thiruvallur in Crl.M.P.No.3351/2019 and the same was dismissed on 17.07.2019. He has not moved a bail application for T-5 SRMC Police Station Cr.No.387/2019 so far. The sponsoring authority has stated that the relatives of Thiru.Yakob are taking action to take him out on bail by filing another bail application for T-15 SRMC Police Station Cr.No.390/2019 and fresh bail application for T-15 SRMC Police Station Cr.No.387/2019 before the appropriate court. It is pertinent to note that in a case registered at P-1 Puliyanthope Police Station Cr.No.500/2018 under Section 392 IPC bail was granted by the Court of V Metropolitan Magistrate Court, Egmore Chennai - 03 in Crl.M.P.No.5603/2018. In a case registered u/s 341, 294(b), 336, 427, 392, 397 & 506 (ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail by filing another bail application for T-15 SRMC Police Station Cr.No.390/2019 and fresh bail application for T-15 SRMC Police Station Cr.No.387/2019 by filing bail

application before the appropriate court since similarly placed cases bails are granted by courts after a lapse of time. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered (i) at P-1 Puliyanthope Police Station Cr.No.500/2018 under Section 392 IPC bail was granted by the Court of V Metropolitan Magistrate Court, Egmore Chennai - 03 in Crl.M.P.No.5603/2018 and (ii) registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018 and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority were registered for the offences u/s 392, 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offences involved in the second adverse case and the ground case are u/s 392 r/w 397, 341, 294(b), 427, 336, 397 and 506(ii) IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention No.443/BCDFGISSSV/2019 dated 29.07.2019, passed by the second respondent is set aside. The detenu, namely, Thiru.Yakob, S/o.Jeeva, male, aged 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/mra
To

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Police (Greater Chennai)
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai District.
3. The Superintendent,
Central Prison-II,
Puzhal at Chennai.
4. The Joint Secretaty to Govt,
Public (Law & Order)
Fort St.George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

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EV(CO)
EMP(20/07/2020)



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