

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.2663 of 2019

Jeevanandham

...Petitioner/Detenu

-vs-

1.State of Tamil Nadu Rep. By  
The Secretary to Government,  
Home, Prohibition Excise Department,  
Fort St. George, Chennai - 600009.

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

...Respondents/ Respondent

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed in No.653/BCDFGISSSV/2019 dated 05.10.2019 passed by the 2<sup>nd</sup> respondent and set aside the same and directing the respondents to produce the petitioner R.Jeevanandham son of Rathinavel aged about 31 years before this Court now confined in Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner .. Mr.K.Thenrajan

For Respondents .. Mr.R.Prathap Kumar,

Addl. Public Prosecutor

ORDER

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

The petitioner herein is the detenu - Jeevanandham, S/o. Rathinavel, male, aged about 31 years. The detenu has been detained by the second respondent by his order in No.653/BCDFGISSSV/2019 dated 05.10.2019 holding to be a "Goonda", as contemplated under 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 Public Prosecutor 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 adverse case and 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. Jeevanandham is in remand in Chennai Central Railway Police Station Crime Nos. 503/2019, 516/2019, 539/2019, 546/2019 and 735/2019 and he has not moved any bail applications for Chennai Central Railway Police Station Crime Nos. 503/2019, 516/2019, 539/2019, 546/2019 and 735/2019 so far. The sponsoring authority has stated that Thiru. Jeevanandham's relatives are taking action to take him out on bail in 539/2019, 546/2019 and 735/2019 by filing bail applications before the appropriate court. It is pertinent to note that in a similar case registered at S-6 Sankar Nagar Police Station Crime No.1003/2018 u/s 379 IPC bail was granted by the Court of Judicial Magistrate, Tambaram, Chennai in CrI.M.P.No.1958/2019. In the similar case registered at R-2 Kodambakkam Police Station Cr.No.1348/2017 under Sections 341, 294(b), 324, 392 and 506(ii) IPC bail was granted by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.No.103/2018. Hence, I infer that there is real possibility of his coming out on bail in Chennai Central Railway Police Station Crime Nos. 503/2019, 516/2019, 539/2019, 546/2019 and 735/2019 by filing bail applications before the appropriate Court, since in 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 at (i) S-6 Sankar Nagar Police Station Crime No.1003/2018 u/s 379 IPC bail was granted by the Court of

Judicial Magistrate, Tambaram, Chennai in Crl.M.P.No.1958/2019 and (ii) similar case registered at R-2 Kodambakkam Police Station Cr.No.1348/2017 under Sections 341, 294(b), 324, 392 and 506(ii) IPC bail was granted by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.103/2018 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 cases relied on by the authority were registered for the offences u/s 379, 341, 294(b), 324, 392 and 506(ii) IPC whereas the offences involved in the adverse cases and ground case are 379, 392, 341, 294(b) 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 in No.653/BCDFGISSSV/2019 dated 05.10.2019, passed by the second respondent is set aside. The detenu, namely, Jeevanandham, S/o. Rathinavel, male, aged about 31 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

mni/ms

To

- 1.The Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition Excise Department,  
Fort St. George, Chennai - 600009.
- 2.The Commissioner of Police,  
Greater Chennai Police,  
Veppery, Chennai.
- 3.The Superintendent,  
Central Prison, Puzhal,  
Chennai.
- 4.The Public Prosecutor,  
High Court, Madras.

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PP(CO)

RMP(20/07/2020)