

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.2677 of 2019

Amuthavalli

...Petitioner/wife of detenu

-vs-

1.State of Tamil Nadu

rep. By Secretary to Government,
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009

2.The Commissioner of Police
Greater Chennai

... Respondents/ Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in Memo.No.773/BCDFGISSSV/2019 dated 11.11.2019 in detain the detenu under 2(b) of Tamil Nadu Act 14 of 1982, as a Drug Offender and quash the same and direct the respondent to produce the detenu Seenivasan @ Seena S/o.Elumalai, aged about 37 years, who is detained at Central Prison, Puzhal, Chennai, before this Honourable Court and set him at liberty.

For Petitioner .. Mr.O.Chembulingam

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 Seenivasan @ Seena, male, aged 37 years, S/o.Elumalai, who is the detenu. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.773/2019 dated 11.11.2019, holding him to be a "Drug Offender", as contemplated under Section 2(e) of the 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 also perused the records produced by the Detaining Authority.

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 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. Seenivasan @ Seena is in remand in S-8 Adambakkam Police Station Crime Nos. 729/2018, 787/2018, 272/2019 and 477/2019 and he has moved bail application for S-8 Adambakkam Police Station Crime No. 272/2019 before the court of Judicial Magistrate, Alandur in Crl.M.P.No.6859/2019 and the same was dismissed. He has moved bail application for S-8 Adambakkam P.S. Cr.No.729/2018 before the court of Judicial Magistrate, Alandur in Crl.M.P.No.6865/2019 and the same was granted and he is yet to offer sureties and he remains at prison. He has moved a bail application for S-8 Adambakkam Police Station Crime No.787/2018 before the Court of Principal District and Sessions Judge at Chengalpattu in Crl.M.P.No.6427/2019 and the same is pending. He has not moved any bail petition for S-8 Adambakkam Police Station Crime No.477/2019 so far. The sponsoring authority has stated that Thiru. Seenivasan @ Seena's relatives are taking action to take him out on bail in S-8 Adambakkam Police Station Crime No.477/2019 by filing bail application and another bail application for S-8 Adambakkam Police Station Crime No.272/2019 before the appropriate court. It is pertinent to note that in a similar case registered at P-4 Basin Bridge Police Station Crime No.327/2018 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, bail was granted by the Principal Special Judge for NDPS Court, Chennai in Crl.M.P.No.662/2018. It is pertinent to note that in a similar case registered at S-6 Sankar Nagar Police Station Crime No.27/2018 under Sections 294(b), 427, 384 and 506(ii) IPC bail was granted by the court of Judicial Magistrate, Tambaram in Crl.M.P.No.198/2018. Hence I infer that he may come out on bail in S-4 Adambakkam P.S. Cr.No.729/2018 by offering sufficient

sureties and it is very likely of his coming out on bail in S-8 Adambakkam Police Station Crime No.787/2018 and there is real possibility of his coming out on bail in S-8 Adambakkam Police Station Crime No.477/2019 by filing bail application and another bail application for S-8 Adambakkam Police Station Crime No.272/2019 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 health and public order....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered in P-4 Basin Bridge Police Station Crime No.327/2018 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, bail was granted by the Principal Special Judge for NDPS Court, Chennai in Crl.M.P.No.662/2018 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 was registered for the offences under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, whereas the offences involved in the ground case are under Sections 8(c) r/w 20(b)(ii)(A) of N.D.P.S. Act. 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 BCDFGISSSV No.773 of 2019 dated 11.11.2019, passed by the second respondent is set aside. The detenu, namely, Seenivasan @ Seena, male, aged 37 years, S/o.Elumalai, 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/ms

To

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

2.The Commissioner of Police
Greater Chennai.

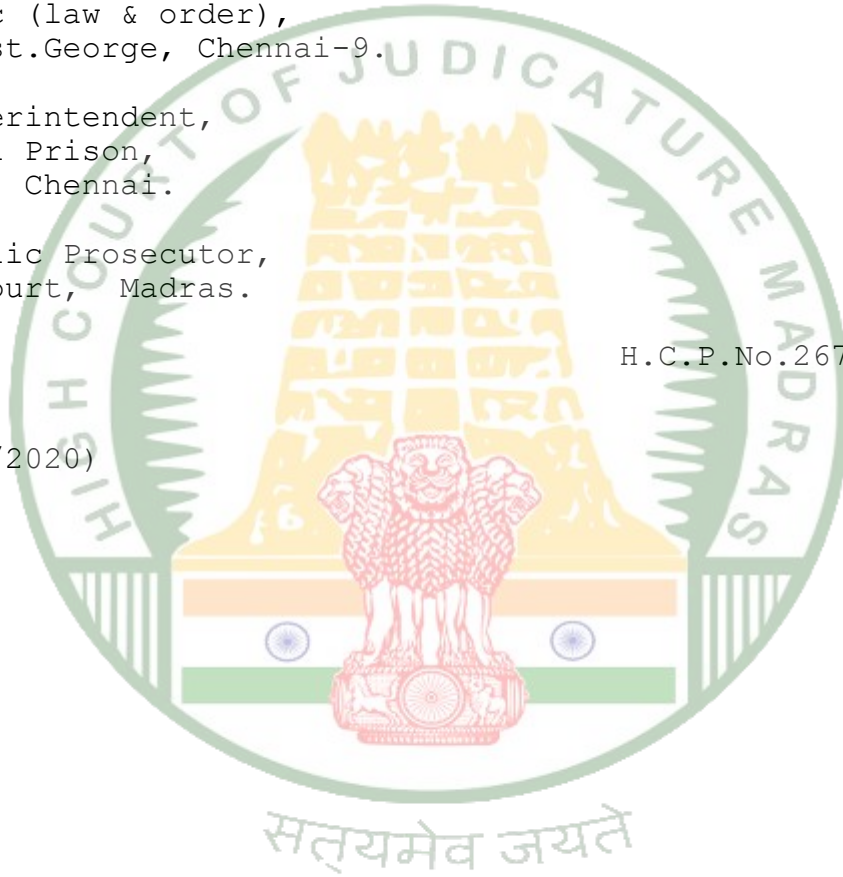
3. The Joint Secretary to Government
Public (law & order),
Fort st.George, Chennai-9.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2677 of 2019

PP(CO)
RMP(20/07/2020)



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