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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.2692 of 2019

Rasayya

... Petitioner

-vs-

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate
Vellore District, Vellore-9. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records in connection with the order of Detention passed by the second respondent dated 22.11.2019 in Memo No.C3/D.O.No.131/2019 against the petitioner's son Thangapandi, Male, aged 23 years S/o.Rasayya, who is confined at Central Prison, Vellore and set aside the same and direct the respondents herein to produce the detenu before this Court and set him at liberty.

For Petitioner .. Mr.S.Senthil Vel
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 father of Thangapandi, Male, aged 23 years S/o.Rasayya, who is the detenu. The detenu has been detained by the second respondent by his order in Memo No.C3/D.O.No.131/2019 dated 22.11.2019, 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 Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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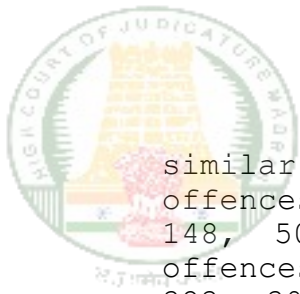
3. The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective 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 5 of the grounds of detention are extracted below:

"5. I am aware that Thiru.Thangapandi was produced before the District Munsif cum Judicial Magistrate, Ranipet on 28.10.2019 in the ground case in Sipcot Police Station Crime No.458/2019 u/s 294(b), 323, 307, 302 IPC and was remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 11.11.2019. Further, his remand was extended upto 03.12.2019.

I am aware that Thiru.Thangapandi has not filed a bail application before any court in ground case in Sipcot Police Station Crime No.458/2019 u/s 294(b), 323, 307, 302 IPC. As far as the ground case concerned, in a similar case registered at Kanchi Taluk Police Station Crime No.15/2016 under sections 147, 148, 506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl.K.Sandhar, S/o.Kuppan and Moses, S/o.Joseph by the Court of the Hon'ble Sessions Court II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.2015. As bails are being granted by courts in such cases, there is most likely of his (Thiru.Thangapandi) coming out of bail by filing bail application in any court. If he enlarge himself on bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and public peace....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered at Kanchi Taluk Police Station Crime No.15/2016 under sections 147, 148, 506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl.K.Sandhar, S/o.Kuppan and Moses, S/o.Joseph by the Court of the Hon'ble Sessions Court II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.2015 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 147, 148, 506(ii), 302 IPC @ 120B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC whereas the offences involved in the ground case are under Sections 294(b), 323, 307 and 302 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 Memo No.C3/D.O.No.131/2019 dated 22.11.2019, passed by the second respondent is set aside. The detainee, namely, Thangapandi, Male, aged 23 years S/o.Rasayya, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi/mra

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate
Vellore District, Vellore-9.
3. The Superintendent,
Central Prison,
Vellore.(Induplicate for Communication to Detenue)
4. The Joint Secretary to Govt,
Public (Law & Order)
Fort st.George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2692 of 2019

KK(CO)
RMP(14/07/2020)