

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.2690 of 2019

Vijaya ... Petitioner/ wife of Detenue

-vs-

1.State of Tamil Nadu
Rep. By its Secretary
Prohibition and Excise Department
Fort St.George
Chennai-600 009

2.The District Collector and District Magistrate
Cuddalore District
Cuddalore

3.The Inspector of Police
Sethiyathope Police Station
Cuddalore District

... Respondents/Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records of the detention dated 11.10.2019 in detention order C3/D.O./80/2019 on the file of the second respondent herein, and quash the same and direct the respondents herein to produce the body of the detenue Johnpeter @ Madumutty @ Neduchezhiyan, S/o.Kathirvel, Hindu aged about 67 years, who is now confined in Central Prison, Cuddalore, before the Honourable Court and set him at liberty.

For Petitioner .. Mr.R.Silambarasan
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 Johnpeter @ Madumutty @ Neduchezhiyan, male, aged 67 years, S/o.Kathirvel, who is the detenu. The detenu has been detained by the second respondent by his order in C3/D.O./80/2019 dated 11.10.2019, holding him to be

a "Drug Offender", as contemplated under Section 2(f) 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 6 of the grounds of detention are extracted below:

"6. I am aware that Thiru. Johnpeter @ Madumutty @ Neduchezhiyan, S/o. Kathirvel has been remanded in judicial custody upto 18.10.2019 and lodged at Central Prison, Cuddalore in connection with Sethiyathope P.S. Cr.No.202/2019 u/s. 8(c) r/w 20(b) (ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985. I am aware that he has already filed two bail applications before the Court of Judicial Magistrate No.I, Chidambaram and the same were dismissed on 25.09.2019 in CrI.M.P.No.1312/2019 and dismissed on 30.09.2019 in CrI.M.P.No.1336/2019. Further he filed another bail application before the Court of District Sessions Judge, Cuddalore on 30.09.2019 and the same was dismissed on 30.09.2019 in CrI.M.P.No.1336/2019. Further he filed another bail application before the Court of District Sessions Judge, Cuddalore on 30.09.2019 and the same was dismissed on 04.10.2019 in CrI.M.P.No.6253/2019. In similar case in Vridhachalam P.S. Cr.No.07/2019 u/s 8(c) r/w 20(b)(ii)(A) of Narcotics Drugs and Psychotropic Substances Act, 1985, bail was granted to the accused (Sankar, S/o.Sarangapani) by the court of Judicial Magistrate No.II, Vridhachalam in CrI.M.P.No.33/2019 on 07.01.2019 (copy enclosed). Hence I infer that there is likelihood of his (Thiru. Johnpeter @ Madumutty @ Neduchezhiyan) coming out on bail in Sethiyathope P.S. Cr.No.202/2019 by filing another bail application before the competent court, since bail is granted by court in such cases....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered Vridhachalam P.S. Cr.No.07/2019 u/s 8(c) r/w 20 (b)(ii)(A) of Narcotics Drugs and Psychotropic Substances Act, 1985, bail was granted to the accused (Sankar, S/o.Sarangapani) by the court of Judicial Magistrate No.II, Vridhachalam in CrI.M.P.No.33/2019 on 07.01.2019, 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)(A) of Narcotics Drugs and Psychotropic Substances Act, 1985 whereas the offences involved in the ground case are under 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985.. 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 C3/D.O/80/2019 dated 11.10.2019, passed by the second respondent is set aside. The detenu, namely, Johnpeter @ Madumutty @ Neduchezhiyan, male, aged 67 years, S/o.Kathirvel, 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 District Collector and District Magistrate
Cuddalore District
Cuddalore

3.The Inspector of Police
Sethiyathope Police Station
Cuddalore District

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

5.The Superintendent,
Central Prison,
Cuddalore.

6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2690 of 2019

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



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