



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.05.2020

Coram

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

H.C.P.No.2713 of 2019

Lakshmi ... Petitioner/Mother of the detenu

-vs-

1.The Secretary to the Government,
Home, Prohibition Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector &
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 records in connection with the order of Detention passed by the second respondent dated 22.11.2019 in Memo No.C3/D.O.No.130/2019 against the petitioner's son Palani, male, aged 29 years S/o.Pandurangan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents 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 mother of Palani, male, aged 29 years, S/o.Pandurangan, who is the detenu. The detenu has been detained by the second respondent by his order in Memo No.C3/D.O.No.130/2019 dated 22.11.2019 holding him to be a "Goonda", 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 adverse cases 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 5 of the grounds of detention are extracted below:

"5. I am aware that Thiru. Palani was produced before the Judicial Magistrate No. IV, Vellore on 04.11.2019 in the ground case in Vellore North Crime Police Station Crime No. 417/2019 u/s. 341, 294(b), 392, 397, 506(ii) IPC r/w Section 3(1) Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 and was remanded to judicial custody and lodged at Central Prison, Vellore as remand prisoner till 18.11.2019. Further, his remand period was extended to 02.12.2019. I am aware that Thiru. Abdulla has not filed any bail application before any court in ground case in Vellore North Crime Police Station Crime No. 417/2019 u/s 341, 294(b), 392, 397, 506(ii) IPC r/w Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. As far as the ground case concerned, in a similar case registered at Vellore North Crime Police Station Crime No. 200/2017, under Sections 294(b), 394, 397, 506(ii) IPC, bail was granted to the accused Thiru. Nandhu @ Nandhakumar by the Court of the Principal District Judge, Vellore in CrI.M.P.No. 2714/2017 on 07.07.2017. As bails are being granted by courts in such cases, there is most likely that he (Thiru. Palani) may come out 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 in Vellore North Crime Police Station Crime No. 200/2017, under Sections 294(b), 394, 397, 506(ii) IPC, bail was granted to the accused Thiru. Nandhu @ Nandhakumar by the Court of the Principal District Judge, Vellore in CrI.M.P.No. 2714/2017 on 07.07.2017, 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 294(b), 394, 397, 506(ii) IPC in Vellore North Crime Police Station Crime No.200/2017 whereas the offences involved in the ground case are under Sections 341, 294(b), 392, 397, 506(ii) IPC r/w Section 3(1) Tamil Nadu Property (Prevention of Damage and Loss) Act 1992. 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.130/2019 dated 22.11.2019 passed by the second respondent is set aside. The detenu, namely, Palani, male, aged 29 years, S/o.Pandurangan, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

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

sj(co)
krd 15/7

H.C.P.No.2713 of 2019