

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 2791 of 2019

Jaishankar M/A 25 years
S/o. Ganesan
No.12, Anbu Nagar Main Road
Koladi, Thiruverkadu
Chennai - 600 077.

.... Petitioner

-vs-

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

2. The Commissioner of Police
Greater Chennai
Chennai.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the records and quash the same leading to the detention of the petitioner's brother namely Jaisathish @ Sathish, Son of Ganesan, aged 22 years, detained under Act 14/82 vide detention order dated 07.11.2019 on the file of the 2nd respondent herein made in BCDFGISSSV No.761/2019 and consequently, direct the respondent herein to produce the body and person of the said detenu before this Court and thereafter set him liberty from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.L.Vinoth Kumar

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 brother of the detenu Jaisathish @ Sathish, Son of Ganesan, aged 22 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.761/2019 dated 07.11.2019 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 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 fourth adverse case and 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 Jaisathish @ Sathish is in remand in T-5 Thiruverkadu Police Station Crime Nos.664/2019 and 666/2019. He has not filed any bail applications for T-5Thiruverkadu Police Station Crime Nos.664/2019 and 666/2019 so far. The sponsoring authority has stated that the relatives of Thiru. Jaisathish @ Sathish are taking action to take him out on bail by filing bail applications for T-5 Thiruverkadu Police station Crime Nos.664/2019 and 666/2019 before the appropriate court. In a similar case registered u/s 294(b), 324, 307 and 506(ii) IPC in T-3 Korattur Police tation Cr.No.193/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.1232/2018. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in T-5 Thiruverkadu Police Station Crime Nos.664/2019 and 666/2019 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 the similar case registered (i) at T-3 Korattur Police Station Cr.No.193/2018, u/s 294(b), 324, 307 and 506(ii) IPC in bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.1232/2018 and (ii) at M-4 Red Hills Police Station in Cr.No.369/2018, u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in bail was granted by the Principal District Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018 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 294(b), 324, 307 and 506(ii) IPC and 341, 336, 427, 392, 397 & 506(ii) IPC whereas the offences involved in the fourth adverse and the ground case are u/s 147, 148, 341, 294(b), 323, 324, 307 IPC and 341, 294(b), 336, 397 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 B.C.D.F.G.I.S.S.S.V No.789/2019 dated 18.11.2019, passed by the second respondent is set aside. The detenu, Jaisathish @ Sathish, Son of Ganesan, aged 22 years, 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

raa/mmi/ssm
To

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

2.The Commissioner of Police
Greater Chennai
Chennai.

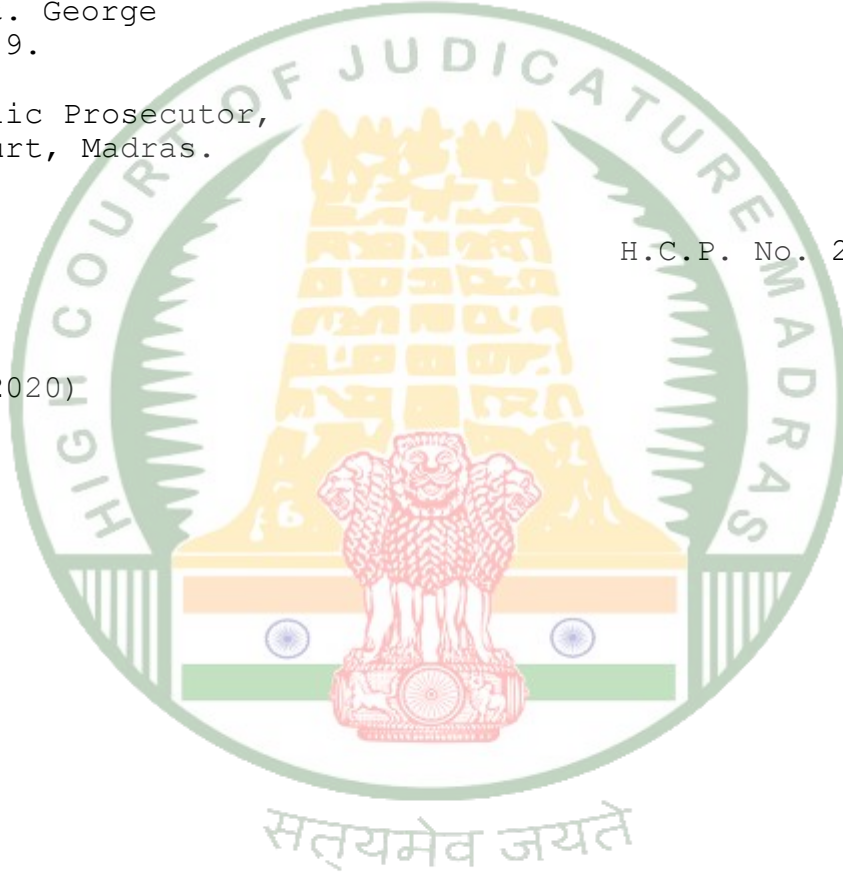
3.The Superintendent,
Central Prison, Puzhal,
Chennai.

4.The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 2791 of 2019

AD(CO)
SP(31/07/2020)



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