

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. 2797 of 2019

M.Radha, W/o.Manjunathan
No.27, Bharathiyar Street
Senthil Nagar, Thirumullaivoil
Chennai - 600 062. Petitioner

-vs-

1. The Commissioner of Police
Greater Chennai
Vepery, Chennai - 600 007.
2. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
3. The Superintendent
Central Prison, Puzhal, Chennai. 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 1st respondent herein concerned in 792/BCDFGISSSV/2019 dated 18.11.2019, quashing the same, directing the respondents herein to produce the body and person of the detenu, petitioner's son by name, Siranjeevi S/o. Manjunathan, aged about 24 years, before this Court and setting him at liberty now detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.R.Rajan

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 the detenu by name Siranjeevi S/o. Manjunathan, aged about 24 years. The detenu has been detained by the first respondent by his order in No.792/BCDFGISSSV/2019 dated 18.11.2019 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 first adverse case 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 Siranjeevi is in remand in T-10 Thirumullaivoyal Police Station Crime Nos.934/2019 and 1189/2019 and Anandhapuram Police Station, Villupuram District Cr.No.219/2019 and 231/2019. He has not moved any bail applications for T-10 Thirumullaivoyal Police Station Crime Nos.934/2019 and 1189/2019 and Anandhapuram Police Station, Villupuram District Cr.No.219/2019 and 231/2019 so far. The sponsoring authority has stated that the relatives of Thiru Siranjeevi are taking action to take him out on bail by filing bail applications for T-10 Thirumullaivoyal Police Station Crime Nos.934/2019 and 1189/2019 and Anandhapuram Police Station, Villupuram District Cr.No.219/2019 and 231/2019 before the appropriate court. It is pertinent to note that in a similar case registered at T-6 Avadi Police Station Crime No.620/2018 under Sections 457, 380 IPC bail was granted by the Court of

Judicial Magistrate No.II, Poonamallee in Crl.M.P.No.5076/2018. In a similar case registered under section 341, 294(b), 336, 427, 392, 397 and 506 (ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018. Hence I infer that it is very likely of his coming out on bail in T-10 Thirumullaivoyal Police Station Cr.No.1189/2019 and there is real possibility of his coming out on bail in T-10 Thirumullaivoyal Police Station Crime T-10 Thirumullaivoyal Police Station Crime Nos.934/2019 and 1189/2019 and Anandhapuram Police Station, Villupuram District Cri.No.219 of 2019 and 231/2019 by filing bail application 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 cases registered at T-6 Avadi Police Station Crime No.620/2018 under Sections 457, 380 IPC bail was granted by the Court of Judicial Magistrate No.II, Poonamallee in Crl.M.P.No.5076/2018 and in another similar case registered under Sections 341, 294 (b), 336, 427, 392, 397 and 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.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 under Sections 457, 380 IPC and 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC whereas the offences involved in the first adverse case and ground case are under Sections 457 and 380 IPC and 341, 294(b), 323, 336, 427, 392, 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 Memo No.792/BCDFGISSSV/2019 dated 18.11.2019 passed by the first respondent is set aside. The detenu, viz.,Siranjeevi S/o. Manjunathan, aged about 24 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 Commissioner of Police
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Vepery, Chennai - 600 007.
2. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
3. The Superintendent
Central Prison
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government
Public Law & Order Fort St. George
Chennai

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