

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2020

Coram

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

H.C.P. No. 2812 of 2019

M.Kumar (aged 42 years)
S/o.Muthu
Pananthur Village
Pananthur Post
Poochamballi Taluk
Krishnagiri District.

... 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. District Magistrate and
District Collector
Dharmapuri.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to produce the body of the detenu Vadivelu @ Velu, Son of Muthu, aged 40 years, presently confined at Central Prison, Salem, before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 17.11.2019 made in vide S.C.No.19/2019 passed by the 2nd respondent, quash the same.

For Petitioner : Mr.B.Mohan

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 Vadivelu @ Velu, Son of Muthu, aged 40 years. The detenu has been detained by the

second respondent by his order in S.C.No.19/2019 dated 17.11.2019 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 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:

"5.I am aware that Thiru Vadivel @ Velu was produced before the Court of Judicial Magistrate No.II, Dharmapuri on 15.10.2019 in Krishnapuram Police Station Crime No.186/2019 u/s 392 r/w 397, 506(ii) IPC, and was remanded to judicial custody and lodged at the Central Prison, Salem as remand prisoner till 25.10.2019. In this case his remand has been extended till 08.11.2019 and then upto 22.11.2019. He has filed bail petition for the ground case of Krishnapuram Police Station Crime No.186/2019 u/s 392 r/w 397, 506 (ii) IPC, before the District Sessions Court, Dharmapuri in CrI.M.P.No.1622/2019 dt.21.10.2019 and the same is pending. I am also aware that in similar case of his 9th adverse case of Dharmapuri Police Station Crime No.477/2019, u/s 392 r/w 397 IPC, he was released on bail, by the District Principal Sessions Court, Dharmapuri, vide in CrI.M.P.No.1349/2019 dt.4.10.2019. Hence, I infer that it is very likely of his (Thiru.Vadivel @ Velu) coming out on bail, in the above said case, since bails are granted by the Courts in such cases. If he (Thiru.Vadivel @ Velu) 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 of his 9th adverse case of Dharmapuri Police Station Crime No.477/2019, u/s 392 r/w 397 IPC, he was released on bail, by the District Principal Sessions Court, Dharmapuri, vide in

CrI.M.P.No.1349/2019 dt.4.10.2019 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 392 r/w 397 IPC whereas the offences involved in the ground case are under Sections 392 r/w 397,506 (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 S.C.No.19/2019 dated 17.11.2019, passed by the second respondent is set aside. The detenu, Vadivelu @ Velu, Son of Muthu, aged 40 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 District Magistrate and
District Collector
Dharmapuri.

3.The Superintendent,
Central Prison, Salem.

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. 2812 of 2019

AD(CO)
SP(30/07/2020)