

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. 2817 OF 2019

M.Ayyammal

...Petitioner

-vs-

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

2.The Commissioner of Police  
Chennai City  
E.V.K. Sampath Salai  
Vepery, Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the records in relating to the order of Detention passed by the 2<sup>nd</sup> respondent dated 18.11.2019 in B.C.D.F.G.I.S.S.S.V. No. 788/2019 against the Detenu, Selvakumar, Male, aged about 33 years, son of Muthu, who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Karthik

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 Selvakumar, Male, aged about 33 years, son of Muthu. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V. No. 788/2019 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 second 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru.Selvakumar is in remand in E-3 Teynampet Police Station Crime Nos.587/2019 and 590/2019 and he has moved bail petition for E-3 Teynampet P.S. Cr.Nos.587/2019 and 590/2019 before the Court of Principal Sessions, Chennai in CrI.M.P.Nos.24279/2019 and 24280/2019 and the same are pending. In the adverse case registered at E3 Teynampet Police Station Cr.No.543/2019 under Sections 147, 148, 294(b), 323, 397 and 506(ii) IPC bail was granted to the above accused by the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.21309/2019. In the similar case registered at R1 Mambalam Police Station Cr. No.18/2019 under Sections 147, 148, 341, 294(b), 307, 323, 506(ii) IPC bail was granted to the accused by the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.996/2019. Hence, I infer that it is very likely of his coming out on bail in E-3 Teynampet P.S.Cr.Nos.587/2019 and 590/2019 cases, 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 at R1 Mambalam Police Station Cr. No.18/2019 under Sections 147, 148, 341, 294(b), 307, 323, 506(ii) IPC bail was granted to the accused by the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.996/2019 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 147, 148, 341, 294(b), 307, 323, 506(ii) IPC whereas the offences involved in the second adverse case and ground case are under Sections 147, 148, 294(b), 324, 307, 506(ii) r/w 34 IPC and 147, 294(b), 323, 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. 788/2019 dated 18.11.2019, passed by the second respondent is set aside. The detenu, Selvakumar, Male, aged about 33 years, son of Muthu, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

raa/mmi/ssm

To

- 1.The Home Secretary to Government of Tamil Nadu  
Home, Prohibition and Excise Department  
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police  
Chennai City, E.V.K. Sampath Salai  
Vepery, Chennai.
- 3.The Superintendent,  
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,  
Public (Law and Order) Department,  
Fort St.George, Chennai-9.
- 5.The Public Prosecutor,  
High Court, Madras.

H.C.P. No. 2817 of 2019

AD(CO)  
KKV/28/08/2020