

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2020

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

H.C.P. No. 2832 of 2019

Iyyappan

... Petitioner

Vs.

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

2. The District Collector and District
Magistrate of Cuddalore District
at Cuddalore.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the records relating to the detention order in C3/D.O/88/2019, dated 19.10.2019 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Jayaseelan S/o Iyyappan the detenu now confined in Central prison, Cuddalore, before this Hon'ble Court and set the petitioner's Son Jayaseelan, S/o Iyyappan, aged about 22 years, the detenu herein and set him at liberty.

For Petitioner : Mr.K.Vivekanandhan

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 father of the detenu Jayaseelan, S/o.Iyyappan, aged 22 years. The detenu has been detained by the second respondent by his order in C3/D.O/88/2019, dated

19.10.2019 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Jayaseelan, S/o.Iyyappan has been remanded in judicial custody upto 31.10.2019 and lodged at Central Prison, Cuddalore in connection with Annamalai Nagar Police Station Cr.No.205/2019 under Section 294(b), 147, 148, 448, 120(b), 302 IPC r/w 4 (a) Explosives Substance Act 1908. I am aware that he has already filed a bail application before the Court of District Sessions Judge, Cuddalore in Crl.M.P.No.6398/2019 on 14.10.2019 and is pending. In a similar case in Nellikuppam PS Cr.No.19/2019 u/s 147,148, 294(b), 452, 324,302 IPC r/w 3 & 4(b) Explosive Substance Act 1908 bail was granted to the accused (Sethupathi and Ragul) by the Court of District and Vacation Sessions Judge, Cuddalore in Crl.M.P.No.3113/2019 on 23.05.2019. Hence, I infer that there is likelihood of his (Thiru.Jayaseelan S/o.Iyyappan) coming out on bail in Annamalai Nagar Police Station Cr.No.205/2019, since bail is granted by courts in such cases. If he comes out on bail, he will indulge in future 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 in Nellikuppam PS Cr.No.19/2019 u/s 147,148, 294 (b), 452, 324,302 IPC r/w 3 & 4(b) Explosive Substance Act 1908 bail was granted to the accused (Sethupathi and Ragul) by the Court of District and Vacation Sessions Judge, Cuddalore in Crl.M.P.No.3113/2019 on 23.05.2019 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 u/s 147,148, 294(b), 452, 324,302 IPC r/w 3 & 4(b) Explosive Substance Act 1908 whereas the offences involved in the ground case are under Sections 294(b), 147, 148, 448, 120(b), 302 IPC r/w 3, 4(a) Explosive Substance Act,1908. 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 C3/D.O/88/2019, dated 19.10.2019, passed by the second respondent is set aside. The detenu, Jayaseelan, S/o.Iyyappan, aged 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(AD I)MDU

//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 Collector and District
Magistrate of Cuddalore District
at Cuddalore.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai - 9.

H.C.P. No.2832 of 2019

AD(CO)
KKV/29/07/2020