

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.05.2020

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MS. JUSTICE P.T.ASHA

H.C.P.NO.2882 OF 2019

Arumugam
S/o Ganesan

...Petitioner/Father of
Detenu

-vs-

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

2. Office of the District Collector and
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed in D.O.No.91/2019-C2 dated 20.11.2019 passed by the 2nd respondent and set aside the same and directing the respondents to produce the petitioner's son by name Deva son of Arumugam, aged about 24 years before this Court now confined in Central Prison, Vellore and set him at liberty.

For Petitioner .. Mr.K.Thenrajan
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 Deva, male, aged 24 years, S/o.Arumugam, who is the detenu. The detenu has been detained by the second respondent by his order in D.O.No.91/2019-C2 dated 20.11.2019 holding him to be a "Goonda", as contemplated under

Section 2(f) of the 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. Deva is remanded in judicial custody and lodged in Central Prison, Vellore in ground case in Cheyyar Police Station Cr.No.686/2019 u/s 147, 148, 302 IPC r/w Sec. 3 of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Further, I submit no bail petition has been filed so far on behalf of the accused Thiru. Deva before any court of laws. Further the Sponsoring Authority has filed a Special Report stating that the relatives of the accused Thiru. Deva was trying to release the accused on bail in the ground case. Further in a similar case in Tiruvannamalai Town Police Station Cr.No.695/2013 u/s. 323, 302 IPC against 1. Thiru. Vetrivel, 2. Thiru. Ramu and 3. Thiru. Elumalai, bail was dismissed by the District Sessions Court, Tiruvannamalai in CrI.M.P.No.3794/2013 dated 25.11.2013 and they were released on bail by the order of the Hon'ble High Court, Chennai in CrI.O.P.No.290/2014 dated 07.01.2014. Hence I infer that there is a real possibility of his (Thiru. Deva) coming out on bail by filing bail application before appropriate Court, since bails are granted by the courts in such case....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered u/s 323, 302 IPC in Tiruvannamalai Town Police Station Cr.No.695/2013, bail was granted by this Court in CrI.O.P.No.290/2014 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 323, 302 IPC in Tiruvannamalai Town Police Station Cr.No.695/2013 whereas the offences involved in the ground case are under Sections 147, 148, 302 IPC r/w Sec. 3 of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. 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 D.O.No.91/2019-C2 dated 20.11.2019, passed by the second respondent is set aside. The detenu, namely, Deva, male, aged 24 years, S/o.Arumugam, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ms

To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition Excise Department,
Fort St.George, Chennai - 600 009.
2. The Office of the District Collector and
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2882 of 2019

VBA(CO)
KKV/17/07/2020