

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2020

Coram

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

H.C.P. No. 2856 of 2019

Mageswari

.. Petitioner

Vs.

1. The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St, George, Chennai - 9.
 2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai - 600 007.
- .. 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 impugned order in Memo No.830/BCDFGISSSV/2019 dated 04.12.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondent to produce the detenu namely Manikandan son of Periyakaruppan, Hindu aged about 41 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.Divakar

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

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ORDER
[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of the detenu Manikandan, son of Periyakaruppan, aged about 41 years. The detenu has been detained by the second respondent by his order in Memo No.830/BCDFGISSSV/2019 dated 04.12.2019 holding to be a "Drug

Offender", as contemplated under Section 2(e) 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 3 of the grounds of detention are extracted below:

"3.I am aware that Thiru.Manikandan is in remand in T12 Poonamallee Police Station Crime No.873/2019 before the Court of Special Judge for EC & NDPS Act Cases in Crl.M.P.No.2801/2019 and the same is pending. It is pertinent to note that in a similar case registered at P4 Basin Bridge Police Station Crime No.327/2018 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985, bail was granted by the Principal Special Judge, EC & NDPS Court, Chennai in Crl.M.P.No.662/2018. Hence I infer that it is very likely of his coming out on bail in T12 Poonamallee Police Station Crime No.873/2019 since in similarly places 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 health and 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 P4 Basin Bridge Police Station Crime No.327/2018 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985, bail was granted by the Principal Special Judge, EC & NDPS Court, Chennai in Crl.M.P.No.662/2018 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 case relied on by the authority was registered for the offences under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985, whereas the offences involved in the ground case are under Section 8(c) r/w 25, 20(b)(ii)(B) of NDPS Act, 1985. 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.830/BCDFGISSSV/2019 dated 04.12.2019, passed by the second respondent is set aside. The detenu, Manikandan, son of Periyakaruppan, aged about 41 years, 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

raa/mmi/ssm
To

1. The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St, George, Chennai - 9.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai - 600 007.
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.

NAS (CO)
RMP (07/10/2020)

H.C.P. No.2856 of 2019