

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. 2878 of 2019

Kalaiselvan

... Petitioner

-vs-

1.The State of Tamilnadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai, Chennai. ... 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 by the 2nd respondent in No.813/BCDFGISSSV/2019 dated 26.11.2019 against the petitioner Kalaiselvan's son by name detenu Venkateshkumar, Male, 25/2019 son of Kalaiselvan now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Muruganantham

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, Venkateshkumar, son of Kalaiselvan, male, aged 25 years. The detenu has been detained by the second respondent by his order in No.813/BCDFGISSSV/2019 dated 26.11.2019, 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 3 of the grounds of detention are extracted below:

"5. I am aware that Thiru Venkateshkumar is in remand in T-10 Thirumullaivoyal Police Station Cr.Nos.1196/2019. He has not moved a bail application for T-10 Thirumullaivoyal Police Station Cr.Nos.1196/2019 so far. The sponsoring authority has stated that the relatives of Thiru Venkateshkumar are taking action to take him out on bail by filing bail application for T-10 Thirumullaivoyal Police Station Cr.Nos.1196/2019 before the appropriate court. Further, in a similar case, registered at F-1 Chintadripet P.S. Cr.No.809/2014 u/s 147, 148, 341, 307 IPC @ 302 IPC bail was granted by the Principal Sessions Judge at Chennai in CrI.M.P.No.17395/2014. Hence, I infer that there is real possibility of his coming out on bail in T10 Thirumullaivoyal Police Station Crime No.1196/2019 by filing bail application before the appropriate court 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 F-1 Chintadripet P.S. Cr.No.809/2014 u/s 147, 148, 341, 307 IPC @ 302 IPC, wherein bail was granted by the Principal Sessions Judge at Chennai in CrI.M.P.No.17395/2014 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 147, 148, 341, 307 IPC @ 302 IPC whereas the offence involved in the ground case is under Section 302 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 No.813/BCDFGISSSV/2019 dated 26.11.2019 passed by the second respondent is set aside. The detenu, namely, Venkateshkumar, son of Kalaiselvan, male, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The Commissioner of Police,
Greater Chennai, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Govt.,
Public (L&O) Fort St. George,
Chennai.
5. The Public Prosecutor,
High Court, Madras.

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