

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2020

Coram

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

H.C.P. No. 2895 of 2019

Maheshwari ... Petitioner/Mother
of Detenue

-vs-

1. The Secretary to Government,
Home, Prohibition and Excise Department,
St.George Fort, Chennai - 9.
2. The District Magistrate and
District Collector,
Salem District,
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the entire records leading to the detention of petitioner's son Thiru.Saravanan, Male, aged about 24 years is presently lodged in Central Prison at Salem and has been detained under Act 14/82 as Goonda vide detention order dated 06.12.2019 on the file of the second respondent herein, made in Memo C.M.P.No.50/Goonda/C2/2019 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty.

For Petitioner : Mr.E.C.Ramesh

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 Saravanan, S/o.Venkatesan,

Male, aged about 24 years who is the detenu. The detenu has been detained by the second respondent by his order in C.M.P.No.50/Goonda/C2/2019 dated 06.12.2019, holding him 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 4 of the grounds of detention are extracted below:

"4. I am also aware that Thiru.Saravanan is in remand in Deevattipatti Police Station Crime No.569/2019 for offences under Section 392 r/w 397 IPC filed a bail application before the Principal Sessions Judge, Salem vide C.M.P.No.3876/2019 which was dismissed on 02.12.2019. In similar case registered at Salem Town Crime Police station Crime No.246/2012, u/s.341, 392 r/w 397, 427 and 506(ii) IPC bail was granted to the accused Thiru.Duraisamy by the High Court, Madras in CrI.O.P.No.25955/2012 on 19.11.2012. Hence, there is a real possibility of his (Thiru.Saravanan) coming out on bail by filing a bail application for the above case before the Higher Court. If he comes out on bail, he will indulge in such 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 Salem Town Police station Crime No.246/2012, u/s.341, 392 r/w 397, 427 and 506(ii) IPC bail was granted to the accused Thiru.Duraisamy by the High Court, Madras in CrI.O.P.No.25955/2012 on 19.11.2012 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 341, 392 r/w 397, 427 and 506(ii)

IPC whereas the offence involved in the ground case is under Section 392 r/w 397 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 C.M.P.No.50/Goonda/C2/2019 dated 06.12.2019, passed by the second respondent is set aside. The detenu, Saravanan, S/o.Venkatesan, Male, aged about 24 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,
Home, Prohibition and Excise Department,
St.George Fort, Chennai - 9.
2. The District Magistrate and
District Collector,
Salem District,
Salem.
3. The Joint Secretary to Government,
Public (Law & Order), Fort St.George, Chennai-9.
4. The Superintendent,
Central Prison, Salem.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 2895 of 2019

VGII(CO)
GS(16/09/2020)