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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2020

CORAM

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

H.C.P.NO.2908 OF 2019

G.Velmurugan

... Petitioner

-vs-

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

2. The Commissioner of Police,
Salem City.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of Detention passed by the second respondent dated 10.12.2019 in C.M.P.No.59/Goonda/Salem City/2019 against the petitioner Brother Vijay @ Vijayakumar, Male aged 23 years S/o.Gunasekaran, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner .. Mr.D.Balaji

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 brother of the detenu, Vijay @ Vijay Kumar, S/o. Gunasekaran, male, aged 23 years. The detenu has been detained by the second respondent by his order in C.M.P.No.59/Goonda/Salem City/2019 dated 10.12.2019, 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.



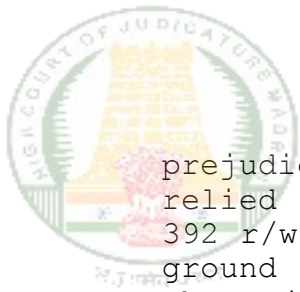
2.We have heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents. We have perused the materials available on record.

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 6 of the grounds of detention are extracted below:

"5.I am aware that Thiru. Vijay @ Vijay Kumar is in remand in the cases of Karuppur PS Cr.No.128/2019 u/s 392 IPC, Ammapet PS Cr.No.325/2019 u/s 392 IPC and Karuppur PS Cr.No.349/2019 u/s 341, 392 r/w 397 and 506(ii) IPC and the bail petition filed on behalf of him in the case of Karuppur PS Cr.No.128/2019 is pending enquiry before the Judicial Magistrate No.2, Salem in CMP No. 5573/2019 and so far no bail petitions filed on behalf of him in the other two cases. Further, it is learnt that the relative of Thiru. Vijay @ Vijaykumar is taking efforts to move bail applications to take him out on bail in the above cases. I am also aware that bail has been granted by the Principal Sessions Judge, Salem in C.M.P.No.346/2019, dated 2.2.2019 for a similar case of Kannankurichi Police Station Cr.No.693/2018 u/s 392 r/w 397 & 506 (ii) IPC registered against one Mandai Vijay @ Vijayakumar, who was remanded on 30.12.2018. Hence, I infer that there is a real possibility of his (Thiru. Vijay @ Vijaykumar) coming out on bail by filing bail petitions in the above case, since bails are granted for similar cases by the concerned Court or the higher Court after efflux of certain time. If Thiru.Vijay @ Vijay Kumar comes out on bail in the above cases in which he is in remand 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 a similar case registered at Kannankurichi Police Station Cr.No.693/2018 u/s 392 r/w 397 & 506 (ii) IPC and bail was granted by the Principal Sessions Judge, Salem in C.M.P.No.346/2019, dated 2.2.2019 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 u/s 392 r/w 397 and 506(ii) IPC whereas the offences involved in the ground case are 341, 392 r/w 397 and 506(ii) 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.59/Goonda/Salem City/2019 dated 10.12.2019, passed by the second respondent is set aside. The detenu, namely, Vijay @ Vijaykumar, S/o.Gunasekaran, male, aged 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi/ms

To

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Chennai 600 009.
2. The Commissioner of Police,
Salem City.
3. The Public Prosecutor,
High Court, Madras.
4. The Central Prison,
Salem.
5. The Joint Secretary to Government,
Public (L & O), Fort St.George,
Chennai-9.

H.C.P.No.2908 of 2019

SVI (CO)
CS/14/07/2020