

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. 2933 of 2019

Elavarasan

... Petitioner

-vs-

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

2.The District Collector and
District Magistrate,
Vellore District,
Vellore.

... 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 detention order passed by the second respondent pertaining to the order made in C3/D.O.No.118/2019 dated 23.10.2019 in detaining the detenu under 2 (b) of Tamil Nadu Act 14 of 1982, as a GOONDA and quash the same and direct the respondent to produce the detenu VETTUKILI @ BALAMURUGAN S/o.MOORTHY, aged about 25 years, who is detained at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.C.Nirmal Krishnan

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 Vettukili @ Balamurugan S/o.Moorthy, aged about 25 years, who is the detenu. The detenu has been detained by the second respondent by his order in C3/D.O.No.118/2019 dated 23.10.2019, 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Vettukili @ Balamurugan is in remand in Tirupathur Town Police Station Cr.No.191/2019 u/s 294(b), 307 IPC and I am also aware that Thiru.Vettukili @ Balamurugan has not made a bail application before any court in ground case in Tirupathur Town Police Station Cr.No.191/2019 u/s 294 (b), 307 IPC. As far as the ground case concerned, in a similar case in Vaniyambadi Town Police Station Cr.No.170/2017 u/s 294(b), 323, 307 IPC, bail was granted to the accused Tr.Kirubakaran, S/o.Gopal by the Court of the Hon'ble Vacation Judge, Vellore, Vellore District in CrI.M.P.No.1964/2017 on 11.06.2017. As bails are being granted by courts in such cases, there is most likely of his (Thiru.Vettukili @ Balamurugan) coming out of bail by filing bail application in any court. If he enlarge himself on bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and public peace"

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar case registered at Vaniyambadi Town Police Station Cr.No.170/2017 u/s 294(b), 323, 307 IPC, bail was granted to the accused Tr.Kirubakaran, S/o.Gopal by the Court of the Hon'ble Vacation Judge, Vellore, Vellore District in CrI.M.P.No.1964/2017 on 11.06.2017 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 294(b), 323, 307 IPC whereas the offences involved in the ground case are under Sections 294(b) and 307 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 C3/D.O.No.118/2019 dated 23.10.2019, passed by the second respondent is set aside. The detenu, Vettukili @ Balamurugan S/o.Moorthy, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

raa/mmi/ssm

To

1.The Secretary to Government,
State of Tamil Nadu, सतयमेव जयते
Home, Prohibition & Excise Department,
Fort St. George, Chennai - 600 009.

2.The District Collector and
District Magistrate,
Vellore District,
Vellore.

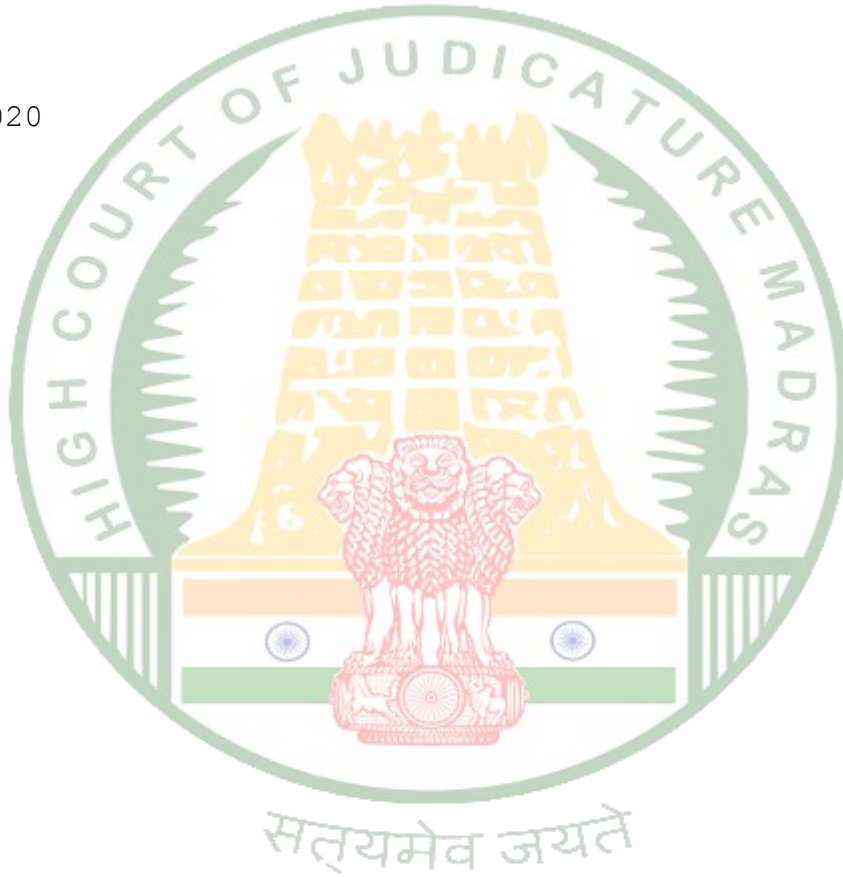
3.The Superintendent,
Central Prison, Vellore.

4.The Joint Secretary to Government
Public Law & Order
Fort St.George Chennai-09

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 2933 of 2019

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