

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. 2928 of 2019

T.Seetha

... Petitioner

-vs-

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

2.District Collector &
District Magistrate,
Kancheepuram District,
Kancheepuram.

... 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 16.12.2019 in B.C.D.F.G.I.S.S.S.V No.88/2019 against the petitioners husband Tamizharasan @ Tamizh, Male aged 24 years S/o.Anthony, who is confined at Central Prison, Vellore 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 wife of the detenu Tamizharasan @ Tamizh, Male aged 24 years S/o.Anthony. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V No.88/2019 dated 16.12.2019 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 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.Tamizharasan @ Tamizh SKaruppasami is in remand in T14 Mangadu Police Station Crime Nos.1377/2019 and 1379/2019 and he has moved a bail application for T14 Mangadu Police Station Crime Nos.1377/2019 and 1379/2019 before the Court of District Judge No.II, Kancheepuram vide Crl.M.P.Nos.3169/2019 and 3196/2019 respectively and the same were pending. It is pertinent to note that in a similar case registered at T13 Kundrathur Police Station Crime No.1143/2019 under Section 24(1) of Cigarette and Other Products of tobacco Act 2003 r/w 328 IPC bail was granted by the Court of District Judge - II, Kancheepuram, vide Crl.M.P.Nos.2543/2019 and 2586/2019. In a similar case registered u/s 341, 294(b), 392, 397, 336, 427 & 506(ii) IPC in S15 Selaiyur Police Station Cr.No.47/2018, bail was granted by the Principal District and Sessions Court, Chengalpattu in Crl.M.P.No.336/2018. Hence I infer that it is very likely of his coming out on bail in T14 Mangadu Police Station Cr.Nos.1377/2019 and 1379/2019 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 T13 Kundrathur Police Station Crime No.1143/2019 under Section 24(1) of Cigarette and Other Products of tobacco Act 2003 r/w 328 IPC bail was granted by the Court of District Judge - II, Kancheepuram, vide Crl.M.P.Nos.2543/2019 and 2586/2019 and in another similar case registered u/s 341, 294(b), 392, 397, 336, 427 & 506(ii) IPC in S15 Selaiyur Police

Station Cr.No.47/2018, bail was granted by the Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.336/2018 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 cases relied on by the authority were registered for the offences under Section 24(1) of Cigarette and Other Products of tobacco Act 2003 r/w 328 IPC and 341, 294(b), 392, 397, 336, 427 & 506(ii) IPC whereas the offence involved in the ground case is under Section 376(2)(m) 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 B.C.D.F.G.I.S.S.V No.88/2019 dated 16.12.2019, passed by the second respondent is set aside. The detenu, Tamizharasan @ Tamizh, Male aged 24 years S/o.Anthony, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

raa/mmi/ssm

To

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector &
District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public (law and Order) Department,
Fort st. George, Chennai-9.

H.C.P. No. 2928 of 2019

NAS (CO)

RMP (06/10/2020)