

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.2917 of 2019

Sumathi

... Petitioner

-vs-

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.

2.District Collector &
District Magistrate,
Vellore District,
Vellore-9.

... 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 20.12.2019 in Memo No.C3/D.O.No.137/2019 against the petitioner Son Manikandan, Male aged 25 years S/o.Sundaresan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mrs.Prabhavathi, APP
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the mother of the detenu Manikandan, Male aged 25 years S/o.Sundaresan. The detenu has been detained by the second respondent by his order in Memo No.C3/D.O.No.137/2019

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dated 20.12.2019 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.Manikandan was surrendered before the court of Judicial Magistrate No.IV, Vellore on 18.11.2019 and ordered to be remanded till 02.12.2019 and lodged at Central Prison, Vellore as a remand prisoner. Further, Thiru.Manikandan was taken into police custody on 25.11.2019. Further Thiru Manikandan was duly produced before the Judicial Magistrate No.IV, Vellore on 26.11.2019. Further judicial remand was extended upto 16.12.2019 and then upto 30.12.2019.

I am aware that Thiru.Manikandan has not filed any bail application before any court in ground case in Vellore North Crime Police Station Crime No.382/2019 u/s 341, 294(b), 392, 397, 506(ii) IPC. As far as the ground case concerned, in a similar case registered at Vellore North Crime Police Station Crime No.200/2017, under Sections 294(b), 394, 397, 506(ii) IPC bail was granted to the accused Thiru.Nandhu @ Nandhakumar by the Court of the Principal District Judge, Vellore in Crl.M.P.No.2714/2017 on 07.07.2017. As bails are being granted by courts in such cases there is very likely that he (Thiru.Manikandan) may coming out of bail, by filing any bail application before 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

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the detaining authority has taken into consideration the similar case registered at Vellore North Crime Police Station Crime No.200/2017, under Sections 294(b), 394, 397, 506(ii) IPC bail was granted to the accused Thiru.Nandhu @ Nandhakumar by the Court of the Principal District Judge, Vellore in CrI.M.P.No.2714/2017 on 07.07.2017 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), 394, 397, 506(ii) IPC whereas the offences involved in the ground case are under Sections 341, 294(b), 392, 397, 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 Memo No.C3/D.O.No.137/2019 dated 20.12.2019, passed by the second respondent is set aside. The detenu, Manikandan, Male aged 25 years S/o.Sundaresan 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,
Home,Prohibition & Excise Department,
Secretariat, Chennai-9.

2.The District Collector &
District Magistrate,
Vellore District, Vellore-9.

3.The Superintendent,
Central Prison, Vellore.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort St.George, Chennai-9.

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5.The Public Prosecutor,
High Court, Madras.

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