

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. 2930 of 2019

Moses

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Prohibition & Excise (Home),
Fort St. George, Chennai-600009

2.The Commissioner of Police,
Chennai City Police,
Greater Chennai,
Commissioner Office, Vepery,
Chennai - 600007.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the records in No.860/BCDFGISSSV/2019 dated 11.12.2019 on the file of second respondent herein and set aside the same as illegal and produce the detenu Moses, son of Kiruparao, aged about 29 years, who is Confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

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ORDER

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

The petitioner himself is the detenu. The detenu has been detained by the second respondent by his order in No.860/BCDFGISSSV/2019 dated 11.12.2019 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru.Moses is in remand in V5 Thirumangalam Police Station Crime No.413/2019 and he has moved a bail application for V-5 Thirumangalam Police Station Crime No.413/2019 before the Court of Principal Sessions Judge at Chennai, in Crl.M.P.No.26168/2019 and the same is pending. In a similar case registered u/s 341, 294(b), 392,397,336,427 & 506(ii) IPC in S-15 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 V5 Thirumangalam Police Station Crime No.413/2019 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 u/s 341, 294(b), 392,397,336,427 & 506(ii) IPC

in S-15 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 case relied on by the authority was registered for the offences under Sections 341, 294(b), 392,397,336,427 & 506(ii) IPC whereas the offences involved in the ground case are under Sections 341, 294(b), 323, 397, 336 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 No.860/BCDFGISSSV/2019 dated 11.12.2019, passed by the second respondent is set aside. The detenu, Moses, son of Kiruparao, aged about 29 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

raa/mmi/ssm
To

1.The Secretary,
State of Tamil Nadu,
Department of Home,Prohibition & Excise (Home),
Fort St. George, Chennai-600009.

2.The Commissioner of Police,
Chennai City Police,
Greater Chennai,
Commissioner Office, Vepery,
Chennai - 600007.

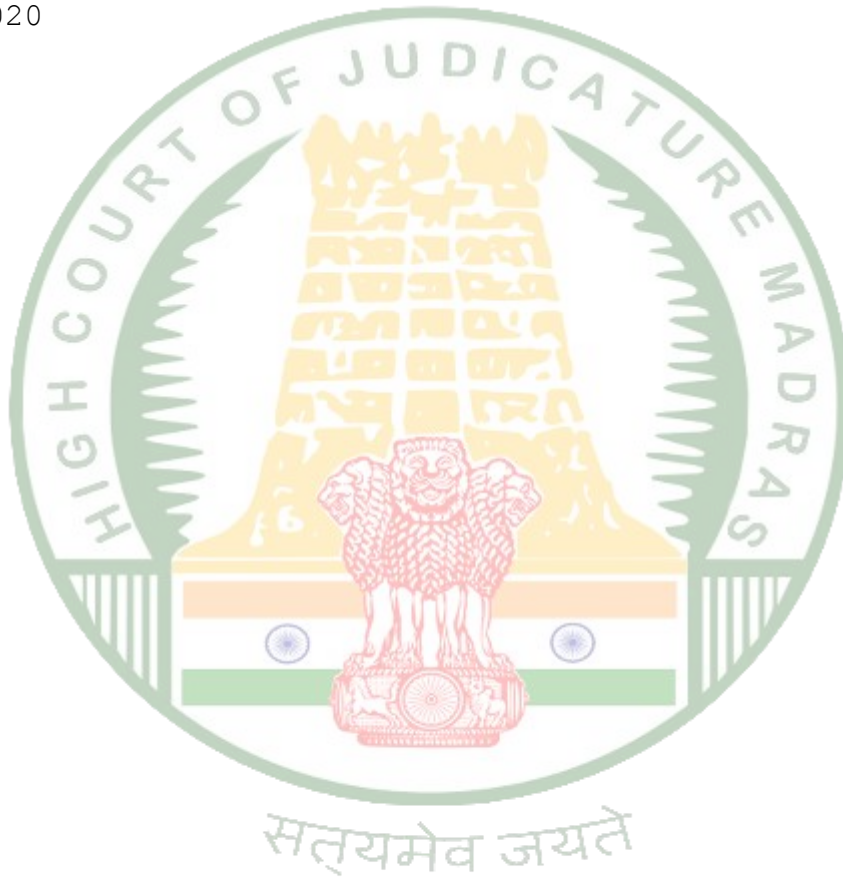
3.The Superintendent,
Central Prison Puzhal, Chennai - 66

4.The Joint Secretary to Government
Public (Law and order) Department
Fort St.George Chennai-09

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 2930 of 2019

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