

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.2038 of 2018

Gandhimathi

... Petitioner

-Vs-

1.The Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police, Greater Chennai,
Officer of the Commissioner of Police (Goondas Section)
Vepery, Chennai – 600007.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records connected with the order of detention passed by the 2nd respondent herein concerned in Memo No.772/BCDFGISSSV/2018 dated 28.08.2018 set aside the order of detention passed therein against the detenu herein by name Mohanraj S/o.Kandasamy quashing the same and setting him at liberty.

For Petitioner : Mr.A.Arasuganesan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court made by C.T.SELVAM, J.]

Petitioner, who is the mother of the detenu, viz., Mohanraj, Son of Kandhasamy, aged 22 years, challenges the impugned order of detention, dated 28.08.2018 in No.772/BCDFGISSSV/2018 detaining her son as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	H-1 Washermenpet Police Station Crime No.463/2016	342, 302, 201 r/w 34 IPC

The ground case has been registered against the detenu in Cr.No.1062/2018 on the file of the Inspector of Police, Kodungaiyur Police Station for offences u/s 341, 294(b), 336, 397 and 506(ii) IPC. The detention order has been passed by the second respondent in No.772/BCDFGISSSV/2018 on 28.08.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also the records produced by the Detaining Authority.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

5. A perusal of the Grounds of Detention would reveal that 1 adverse case has been registered against the detenu and a ground case came to be registered against him in Cr.No.1062/2018 for the offences u/s. 341, 294(b), 336, 397 and 506(ii) IPC. Admittedly, the bail application filed by the detenu in the ground case before the Principal Sessions Judge, Chennai, in CrI.M.P.No.14017/2018 and the same was dismissed on 27.08.2018. Therefore, the probability of release of the detenu imminently does not arise. Hence, we are inclined to set aside the detention order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenue coming out on bail and the said order was passed without application of mind.

C.T.SELVAM, J
and
S.RAMATHILAGAM, J

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6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.772/BCDFGISSSV/2018 dated 28.08.2018, passed by the second respondent is set aside. The detenu, namely, Mohanraj, Son of Kandhasamy, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[C.T.S., J.] [S.R.T., J.]

23.11.2018

Speaking/Non-Speaking order

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To:

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police, Greater Chennai,
Officer of the Commissioner of Police (Goondas Section)
Vepery, Chennai – 600007.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai – 600 009.
5. The Public Prosecutor,
High Court, Madras.

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