

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1179 of 2018

N.Saravana Devi
W/o.Nanda Gopal

... Petitioner

-vs-

1.State of Tamil Nadu
represented by its Secretary,
Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Inspector of Police,
E-3 Teynampet Police Station,
Chennai.

... Respondents

HCP under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records relating to the impugned order of detention dated 22.05.2018 in Memo No.343/BCDFGISSSV2018 passed by second respondent herein and quash the same and consequently direct the respondents to set forth the detenu Nandhagopal S/o.Ayyan Kani, now confined at Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner : Mr.S.Shankar

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu Nandhagopal S/o.Ayyan Kani, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.343/2018 dated 22.05.2018.

2. The alleged ground case has been registered against the detenu in Crime No.340 of 2018 on the file of E-3 Teynampet Police Station, for offences under Sections 147, 148, 353, 506 (ii) 120(b) IPC r/w 25(1-B)a of Arms Act, 1959 and 34 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondent. Perused the materials on record.

4. The detaining authority while noticing that the detenu has moved bail application in the ground case and the same is pending, he had informed that in a similar case bail has been granted by the Court of Principal Sessions, Chennai and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

'5(ii)... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Nandhagopal S/o.Ayyan Kani in BCDFGISSSV No.343/2018 dated 22.05.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Secretary,
Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Inspector of Police,
E-3 Teynampet Police Station,
Chennai.

4.The Public Prosecutor
High Court, Chennai.

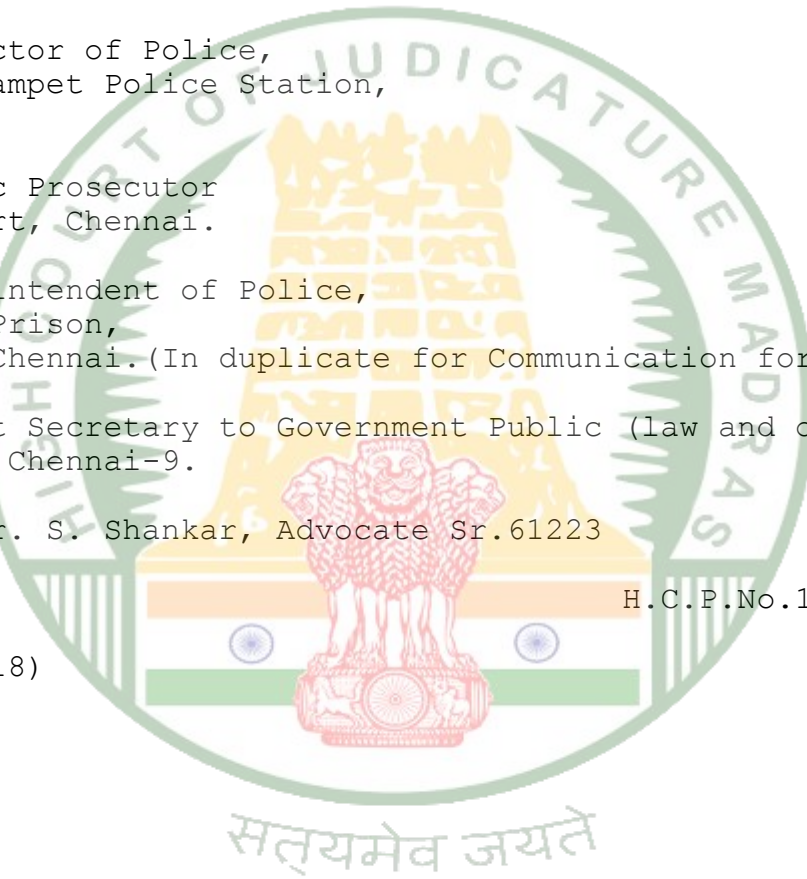
5.The Superintendent of Police,
Central Prison,
Puzhal, Chennai.(In duplicate for Communication for detenue)

6. The Joint Secretary to Government Public (law and order) Fort
st. George, Chennai-9.

+ 1 cc to Mr. S. Shankar, Advocate Sr.61223

H.C.P.No.1179 of 2018

JP(CO)
EU(22/10/2018)



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