

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 122 OF 2018

Lakshmi

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By its Secretary to Govt.
Home, Prohibition & Excise Dept.
Fort St. George, Chennai - 9.

2. The Commissioner of Police
Chennai Police
Vepery, Chennai - 7.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records on the file of the 2nd respondent passed in detention No.781/BCDFGISSSV/2017 dated 20.12.2017 relating to the detention of Karnan @ Karna S/o Sathasivam, aged about 23 years, lodged in Central Prison, Puzhal, Chennai, and direct the 2nd respondent to produce the body of the detenu, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. M.Rajavelu

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The present habeas corpus petition has been preferred by the petitioner challenging the detention order dated 20.12.2017 passed by the 2nd respondent in and by which the 2nd respondent,

detained the detenu, Karnan @ Karna, S/O Sathasivam, as a 'Goonda' under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Though the order of detention is assailed on various grounds, the main submission of the learned counsel for the petitioner is that the detaining authority has referred to the remand of the detenu in the ground case and though he has not moved any bail application, but it has failed to consider the real and imminent possibility of the detenu coming out on bail in the case in which he was under remand and has omitted to express satisfaction over the same and the said omission would vitiate the order of detention. It is submitted that though no bail application has been filed by the detenu in the ground case relating to Crime No.652/2017 on the file of E-5, Foreshore Estate Police Station, however, the detaining authority has observed that there is a possibility of the detenu coming out on bail, which is not borne out by record and this vitiates the order of detention.

3. Counter affidavit has been filed on behalf of the 2nd respondent. This Court heard the learned Addl. Public Prosecutor on the above submission.

4. It is incumbent on the part of the detaining authority to pass an order of detention based on the materials available on record. However, in the case on hand, the detention has been passed by the detaining authority referring to the imminent possibility of the detenu coming out on bail, though no bail application has been moved by the detenu.

5. In the case of Rekha - Vs - State of T.N. & Anr. (2011) (5) SCC, the Supreme Court has held that where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail, who is already in custody provided he has moved a bail application which is pending.

6. In the case on hand, in the absence of any evidence showing that bail application is pending, the omission of the detaining authority to consider the real possibility of the detenu coming out on bail vitiates the order of detention. The said omission, as rightly contended by the learned counsel for the petitioner, would vitiate the order of detention. On this ground alone, the order of detention is liable to be set aside.

7. Accordingly, the habeas corpus petition is allowed and the impugned order of detention made in No.781/BDFGISSSV/2017

dated 20.12.2017 is set aside. The detenu Karnan @ Karna, S/o Sathasivam, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government,
Home, Prohibition & Excise Dept.
Fort St. George, Chennai - 9.
2. The Commissioner of Police
Chennai Police
Vepery, Chennai - 7.
3. The Superintendent of Police
Central Prison, Puzhal
Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P. NO. 122 OF 2018

WEB COPY

gp[col]
srg 13/07/2018