

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1076 of 2018

Bakiya
D/o.Muthusamy

... Petitioner

-vs-

1.State of Tamil Nadu,
represented by
The Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

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

... Respondents

Writ petition 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 detention order in Memo No.298/BCDFGISSSV/2018 dated 07.05.2018 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's friend Arokiya John Bosco S/o.Selvaraj, aged about 32 years, the detenu, now confined at Central Prison, Puzhal, Chennai, before this Court and set the petitioner's friend Arokiya John Bosco S/o.Selvaraj, aged about 32 years, the detenu herein at liberty.

For Petitioner: Mr.K.Bommuraj

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

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O R D E R

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

Petitioner is the friend of the detenu Arokiya John Bosco S/o.Selvaraj, 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 No.298/BCDFGISSSV/2018 dated 07.05.2018.

2. The detenu came to adverse notice in Crime No.117 of 2018 on the file of V-5 Thirumangalam Police Station for offences u/s.457, 380 IPC @ 457, 380, 411 and 414 IPC. The alleged ground case has been registered against the detenu in Crime No.131 of 2018 on the file of V-5 Thirumangalam Police Station, for offences under Sections 294(b), 323, 336, 397, 427 and 506(ii) 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 respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded both in adverse and ground cases and the bail application filed in the adverse case was dismissed and has not moved any bail application in the ground case, he had informed that the relatives of detenu were taking steps to take him out on bail and in a similar case bail has been granted 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 Arokiya John Bosco S/o.Selvaraj in No.298/BCDFGISSSV/2018 dated 07.05.2018 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(CS VI)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai - 600007.
- 3.The Public Prosecutor,
High Court, Chennai.
- 4.The Superintendent of Police,
Central Prison,
Puzhal, Chennai.
(In duplicate for Communication to detenue)
- 5.The Joint Secretary to Government,
Public(Law & order) Fort Saint
George, Chennai-9

H.C.P.No.1076 of 2018

nr 16/10/2018

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