

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

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

H.C.P.No.1178 of 2018

Eshaa
S/o.Umar Katha

... Petitioner

-Vs-

1.State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai,
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 entire records relating to petitioner's cousin brother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 08.05.2018 on the file of second respondent herein made in proceedings BCDFGISSSV No.305/2018 and quash the same as illegal and consequently, direct the respondents herein to produce the said petitioner's cousin brother namely Naina Mohamed S/o.Jamaldeen, aged 30 years, before this Court and set the petitioner's cousin brother at liberty from detention, now petitioner's cousin brother detained at Central Prison, Puzhal, Chennai - 600 066.

For Petitioner : Mr.C.C.Chellappan

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

O R D E R

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

Petitioner is the cousin brother of detenu Naina Mohamed S/o.Jamaldeen, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.305/2018 dated 08.05.2018.

2. The detenu came to adverse notice in the following cases:

Sl.No .	Police Station and Crime No.	Offences u/s.
1.	S-1 St.Thomas Mount Police Station, Crime No.50/2018	341, 323, 419, 395, 294(b) and 506(i) IPC
2.	S-1 St.Thomas Mount Police Station, Crime No.56/2018	341, 392 and 506 (i) IPC

The alleged ground case has been registered against the detenu in Crime No.58 of 2018 on the file of S-1 St.Thomas Mount Police Station for offences under sections 341, 294(b), 323, 336, 397 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Amidst several grounds raised, learned counsel for petitioner submits that the detaining authority noticed that the detenu stands remanded to judicial custody in case registered in Crime Nos.50, 56 and 58 of 2018 on the file of S-1 St.Thomas Mount Police Station and has moved a bail application in Crime No.50 of 2018 before learned Principal Sessions Judge, Chengalpattu and the same is pending and has not moved any bail application in the second adverse case and ground case. However, the detaining authority had informed that the relatives of the detenu were taking efforts to move application to take him out on bail in the second adverse case and ground case 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. Though the detaining authority has informed of an effort by the relatives to move bail petition for the release of the detenu, there is no material to support such contention.

4. We have heard learned Additional Public Prosecutor on the above submissions and also perused the records.

5. We find that there absolutely is no material which would disclose the likelihood of the relatives of the detenu moving bail petition on his behalf in respect of second adverse case

and ground case. Therefore, the non-application of mind and erroneous subjective satisfaction arrived at by the detaining authority is apparent.

Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu, namely, Naina Mohamed S/o.Jamaldeen, in BCDFGISSSV No.305/2018 dated 08.05.2018, 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 VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600007.
- 3.The Superintendent of 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.

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