

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM:

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

H.C.P. No.1224 of 2018

V.Gunasekaran

... Petitioner

-Vs-

- 1.The State Rep. by its Secretary,
Government of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police [Goondas Section]
Vepery, Chennai-600 007.
- 3.The State, rep. by its
Inspector of Police,
S-10 Pallikaranai Police Station,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention BCDFGISSSV NO.388/2018 dated, 11/06/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Sathishkumar, S/O.Gunasekaran, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.M.Ravikumar

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

ORDER

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

The petitioner, who is the father of the detenu, namely, Sathish Kumar, Son of Gunasekaran, age 22 years, challenges the

impugned order of detention, dated 11.06.2018 in BCDFGISSSV No.388/2018 detaining his son as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. The ground case has been registered against the detenu in Crime No.531/2018 on the file of the Inspector of Police, S-10 Pallikaranai Police Station for offences u/s 147, 148, 341, 294 (b), 336, 427, 506(ii) & 302 IPC. The detention order has been passed by Second respondent in BCDFGISSSV No.388/2018 on 11.06.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused 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. The Grounds of Detention would reveal that a ground case was registered against the detenu in Cr.No.531/2018 for the offences u/s.147, 148, 341, 294(b), 336, 427, 506(ii) & 302 IPC. Admittedly, the detenu has moved bail application in the ground case and the same was dismissed on 24.05.2018 by the learned Vacation Sessions Judge, Kancheepuram in CrI.M.P.No.1962/2018. Again he has filed bail application before this Court in CrI.O.P.No.14488/2018 and the same is pending. 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 detenu coming out on bail and the said order was passed without application of mind.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.388/2018 dated 11.06.2018, passed by the second respondent is set aside. The detenu, namely, Sathish Kumar, Son of Gunasekaran, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The Secretary,
Government of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police [Goondas Section]
Vepery, Chennai-600 007.
- 3.The Inspector of Police,
S-10 Pallikaranai Police Station,
Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai-66.
- 5.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 6.The Public Prosecutor
High Court, Madras.

H.C.P.No.1224 of 2018

srg 28/11/2018