

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1306/2018

Senthamizh

... Petitioner

-vs-

1.The Secretary to the Government  
Home, Prohibition & Excise Department  
Secretariat, Chennai-600 009.

2.The Commissioner of Police  
Greater Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent dated 06.06.2018 in Memo NO.375/BCDFGISSSV/2018 the petitioner-detenu Senthamizh, Male, aged 34 years, son of Anthony, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

For Respondents: Mr.M.Mohamed Riyaz, APP

ORDER

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

Petitioner, the detenu herein, challenges the impugned order of detention, dated 06.06.2018 in Memo No.375/BCDFGISSSV/2018 detaining him as a "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 As per the grounds of detention dated 06.06.2018 passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse case:

| S1 No. | Name of the Police station and Crime No. | Section of law                               |
|--------|------------------------------------------|----------------------------------------------|
| 1      | R6 Kumaran Nagar PS Cr.No.2498/2017      | 341, 294[b], 336, 427, 392, 397, 506[ii] IPC |
| 2      | R6 Kumaran Nagar PS Cr.No.252/2018       | 379 IPC                                      |
| 3      | R6 Kumaran Nagar PS Cr.NO.331/2018       | 379 IPC                                      |

(ii) Ground Case:

| S1 No. | Name of the Police station and Crime No. | Section of law                          |
|--------|------------------------------------------|-----------------------------------------|
| 1      | R6 Kumaran Nagar PS Cr.NO.419/2018       | 294[b], 341, 336, 427, 397, 506[ii] IPC |

2 We have heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority including the counter affidavit filed by the respondent.

3 The learned counsel for the petitioner would submit that the Detaining Authority has not satisfied himself as to the real possibility of the detenu coming out on bail in the ground case as well as in the adverse cases No.2 and 3 as the detenu has never moved any bail application in the said case subsequent to the dismissal of the earlier bail applications. Hence, on the above sole ground, the detention order is liable to be set aside.

4 Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with, at the instance of the petitioner.

5 On a perusal of the impugned order of detention, in particular, the Grounds, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail in the 2nd and 3rd adverse cases and in the ground case. Admittedly, at the time of passing the Detention Order, no bail applications were filed in the 2nd and 3rd adverse cases in Cr.No.252/2018 and 331/2018 subsequent to the dismissal of the earlier bail applications, viz., in

Cr1.MP.Nos.1199/2018 & 1200/2018 on 01.06.2018 by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and he has not moved any bail application in the ground case in Cr.No.419/2018. 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. When no bail application is filed, the logical conclusion would be that there is no likelihood of the detenu coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Therefore, on this sole ground alone, the detention order is liable to be set aside.

6 In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent is set aside. The detenu, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary to the Government  
Home, Prohibition & Excise Department  
Secretariat, Chennai-600 009.

2.The Commissioner of Police  
Greater Chennai.

3.The Superintendent of Prisons  
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,  
High Court, Madras.

5.The Joint Secretary to Government,  
Public(Law & Order)  
Fort Saint George,  
Chennai-9

H.C.P.No.1306/2018

spd(co)  
nr 28/11/2018



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