

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.10.2018

CORAM
THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

H.C.P. No. 1362 of 2018

B.Kumar @ Shanmugasundaram, ...Petitioner/detenu

Vs

1.The Principal Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat,
Chennai - 600 009.

2.The District Magistrate - cum- District Collector,
Namakkal District Collector Office,
Namakkal.

...Respondents

PRAYER:Habeas Corpus Petition under Article 226 of the
Constitution of India, to issue a Writ of Habeas Corpus, calling
for the entire records connected with the detention order in
C.M.P.No. 18/Goonda/2018/M1 on 29.06.2018 on the file of the
Respondent No.2 and quash the same and direct the Respondents to
produce the body and person of the Petitioner one named B.Kumar
@ Shanmugasundaram, S/o.Balakrishnan aged about 24 years now
confined at Central Prison, Salem before this Hon'ble Court and
set him at liberty forthwith.

For Petitioner : M/s.J.Stalin
M.Mohamed Saifulla

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

ORDER

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

Petitioner, who is the detenu, viz., Kumar @Shanmugasundaram,
Son of Balakrishnan, aged 24 years, challenges the impugned
order of detention, dated 29.06.2018 in C.M.P.
No.18/Goonda/2018/M1, detaining him as "GOONDA", as
contemplated under Section 2(f) of the Tamil Nadu Prevention of

dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Namakkal Police Station Crime No.250/2018	147, 148, 294(b), 324, 307 IPC

The ground case has been registered against the detenu in Cr.No.399/2018 on the file of Namakkal Police Station, for offences u/s 147,148, 294(b) 341, 324, and 307 IPC. The detention order has been passed by second respondent in C.M.P. No.18/Goonda/2018/M1

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that a ground case came to be registered against the detenu in Cr.No.399/2018 for the offences u/s.147,148, 294(b) 341, 324, and 307 IPC. Admittedly, the bail application filed by the detenu in the ground case before the learned Principal District Sessions Judge, Namakkal, in CMP.No.621/2018 and the same was dismissed on 31.05.2018. 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 passed by the 2nd 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 IV)

//True Copy//

Sub Assistant Registrar

vsi2

To:

- 1.The Principal Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate - cum- District Collector,
Namakkal District Collector Office,
- 3.The Superintendent,
Central Prison,
Salem.
- 4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1362 of 2018

BS(CO)

rrs 07/12/2018

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