

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.1370 of 2018

Dhanalakshmi  
detenue ... Petitioner /wife of the

Versus

1. State of Tamilnadu, Rep.By  
The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,  
Greater Chennai City,  
Vepery, Chennai - 600 007. ... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of Constitution of India, to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention passed in No.393/BCDFGISSSV/2018 dated 18/06/2018 passed by the second respondent and set aside the same and directing the respondents to produce the petitioner's husband by name Rakesh Krishna @ Mahesh Kumar, S/O.Velappa Gounder aged about 32 years before this Hon'ble Court now confined in Central Prison, Puzhal, Chennai set him at liberty

For Petitioner : Mr.K.Thenrajan

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

ORDER

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.393/BCDFGISSSV/2018 dated 18.06.2018, whereby the detenu, by name, Rakesh Krishna @ Mageshkumar, son of Velappa Gouder, aged about 32 years, was ordered to be detained under the provisions 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 of 1982) branding him as a "GOONDA".

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

| S.No . | Police Station & Crime No.                                     | Sections of Law |
|--------|----------------------------------------------------------------|-----------------|
| 1      | Chennai Central Railway Police Station<br>Crime No.331 of 2017 | 392 IPC         |
| 2      | Chennai Central Railway Police Station<br>Crime No.295 of 2018 | 392 and 394 IPC |
| 3      | Chennai Central Railway Police Station<br>Crime No.483 of 2018 | 392 IPC         |
| 4      | Chennai Central Railway Police Station<br>Crime No.537 of 2018 | 392 IPC         |

The ground case has been registered against the detenu in Cr.No.466/2018 on the file of Sub Inspector of Police, J-4, Kotturpuram Police Station, for offence u/s341, 294(b), 353, 336, 307, 427 and 506 (ii) IPC. The detention order has been passed by second respondent in No.393/BCDFGISSSV/2018.

3. We have heard learned counsel for petitioner and the learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

4. Though many grounds have been raised in the 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. Further, the Grounds of Detention would reveal that 4 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.466/2018 for offences u/s341, 294(b), 353, 336, 307, 427 and 506 (ii) IPC. . Admittedly, the detenu has moved a bail application in the ground case before the learned Principal Sessions Judge, Chennai in Crl. M.P. No.8373 of 2018 and the same is pending. He has not moved any bail application in the adverse case. 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 No.393/BCDFGISSSV/2018 dated 18.06.2018, passed by the second respondent is set aside. The detenu, namely, Rakesh Krishna @ Mageshkumar, son of Velappa Gouder, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vsi2/kmi

To

1. The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,  
Greater Chennai City,  
Vepery, Chennai - 600 007.
3. The Superintendent,  
Central Prison,  
Puzhal, Chennai.
4. The Joint Secretary, सत्यमेव जयते  
Public (Law and order) Department,  
Secretariat, Chennai - 600 009.
5. The Public Prosecutor  
High Court, Madras.

H.C.P.No.1370 of 2018

SJ(CO)

EU(12/12/2018)