

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

H.C.P. No. 1453 of 2018

S.Elangovan

... Petitioner

-Vs-

1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai,
Veppery, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the order of the 2nd respondent herein in BCDFGISSSV 454 /2018 dated 29.06.2018 passed against the detenu namely Sekar @ powder Sekar, son of Nagaiah aged about 52 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same consequently, directing the respondents herein to produce the body and person of the detenu before this Hon'ble court and set at liberty.

For Petitioner : Mr.S.Vellidoss

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

The petitioner, who is the son of the detenu, namely, Sekar @ powder Sekar, Son of Nagaiah, age 52 years, challenges the impugned order of detention, dated 29.06.2018 in BCDFGISSSV 454 /2018 detaining her father as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982 Prevention of dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic

Offenders, Sand Offenders, Sexual 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.	V-3 J.J. Nagar Police Station, Cr.No. 156/2018	457, 380 IPC
2.	V-3 J.J. Nagar Police Station, Cr.No. 157/2018	457, 380 IPC
3.	V-3 J.J. Nagar Police Station, Cr.No. 158/2018	457, 380 IPC
4.	V-3 J.J. Nagar Police Station, Cr.No. 187/2018	457, 380 IPC
5.	V-7 Nolambur Police Station Cr.No.279/2018	457, 380 IPC

The ground case has been registered against the detenu in Crime No.305/2018 on the file of the Inspector of Police, K-8 Arumbakkam Police Station for offences u/s 341, 294(b), 323,336, 392 r/2 397 and 506(ii) IPC Sec.3 of TNPPDL Act 1992. The detention order has been passed by Second respondent in BCDFGISSSV 454 /2018 on 29.06.2018.

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 five (5) adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.305/2018 for the offences u/s 341, 294(b), 323,336, 392 r/2 397 and 506(ii) IPC Sec.3 of TNPPDL Act 1992. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal Sessions Judge, Chennai, in CrI.M.P.No. 9428/2018. 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 detainee 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 454 /2018 dated 29.06.2018, passed by the second respondent is set aside. The detenu, namely, Sekar @ powder Sekar, Son of Nagaiah, aged about 52 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

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To:

1. The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai,
Veppery, Chennai.
3. The Superintendent,
Central Prison, Puzhal,
Chennai-66.
4. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor
High Court, Madras.

H.C.P.No.1453 of 2018

SS(CO)
GMY(13/12/2018)