

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

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

H.C.P. No. 1475 of 2018

Balamurugan

...Petitioner

Vs

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

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

...Respondents

PRAYER:Habeas Corpus Petition under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to order of Detention passed by the 2nd Respondent dated, 03.07.2018, No.469/BCDFGISSSV/2018 against the brother of the Petitioner, detainee Thiru Suresh @ Nolla Suresh M/A 30, Son of Andi Thevar, who is confined at Central Prison, Pushal and to set aside the same and consequently direct the respondents to produce the detainee before the Hon'ble Court and set him at his liberty.

For Petitioner : Mr.K.S.Kaviarasu

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

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O R D E R

[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 469/BCDFGISSSV/2018 dated 03.07.2018, whereby the detenu, by name, Suresh @ Nolla Suresh, Son of Andi Thevar ,aged about 30 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 case:-

S.No.	Police Station & Crime No.	Sections of Law
1.	P-6 Kodungaiyur Police Station Crime No.800/2018	174 Cr. P.C. @ 302 IPC

The ground case has been registered against the detenu in Cr.Nos.800 and 848/2018 on the file of Inspector of Police, P-6 Kodungaiyur Police Station, for offence u/s 341, 294(b), 336, 397 and 506 (ii) IPC. The detention order has been passed by second respondent in 469/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 one adverse case has been registered against the detenu and a ground case was registered against him in Cr.Nos.800 and 848/2018 for offences 341, 294(b), 336, 397 and 506 (ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case as also 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 469/BCDFGISSSV/2018, dated 03.07.2018, passed by the second respondent is set aside. The detenu,

namely, Suresh @ Nolla Suresh, son of Andi Thevar, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

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

H.C.P. No. 1475 of 2018

(CS-DR)
EU(03/12/2018)

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