

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.1499 of 2018

Rajesh

... Petitioner

-Vs-

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention BCDFGISSSV.NO.462/2018 dated, 02/07/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Rajesh, M/A 36 years, S/O.Opaiya, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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

ORDER

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

The petitioner is the detenu, namely, Rajesh, Son of Opaiya, age 36 years, challenges the impugned order of detention, dated 02.07.2018 in No.462/BCDFGISSSV/2018 detaining him as "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. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	P-1 Pulianthope Police station Crime No.332/2018	147, 148, 341, 294(b), 302 IPC

The ground case has been registered against the detenu in Crime No.335/2018 on the file of the Inspector of Police, P-1 Pulianthope Police Station for offences u/s 147, 148, 341, 294 (b), 323, 392, 397, 336 & 506(ii) IPC. The detention order has been passed by second respondent in No.462/BCDFGISSSV/2018 on 02.07.2018.

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 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.335/2018 for the offences u/s.147, 148, 341, 294(b), 323, 392, 397, 336 & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case as also in the adverse case and the same are pending before the Principal Sessions Court, Chennai in CrI.M.P.Nos.9780/2018 and 9521/2018 respectively. 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.462/BCDFGISSSV/2018 dated 02.07.2018, passed by the second respondent is set aside. The

detenu, namely, Rajesh, Son of Opaiya, aged about 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmi

To:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, 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.1499 of 2018

NRI (CO)
CSL/04.12.2018

सत्यमेव जयते

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