

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2002/2017

G.Sasikala

... Petitioner

-VS-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The District Magistrate and District
Collector, Tiruvallur District,
Tiruvallur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, in connection with the order of detention passed by the 2nd respondent dated 30.09.2017 in Memo No.34/BCDFGISSSV/2017 against the petitioner's son Yuvaraj, son of Gangadurai, aged about 20 years, who is confined at Borstal School, Pudukkottai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
For Respondents : Mr.V.M.R.Rajentren, APP

ORDER

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

The petitioner, who is mother of the detenu, namely, Yuvaraj, S/o.Gangadurai, age 20 years, challenges the impugned order of detention, dated 30.09.2017 in BCDFGISSSV No.34/2017, detaining her son 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 We have heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3 The learned counsel for the petitioner would submit that the similar case relied on by the Detaining Authority relates to some other accused and not the co-accused of the detenu. He would further submit that the Detaining Authority has not satisfied himself as to the real possibility of the detenu coming out on bail.

4 Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with, at the instance of the petitioner.

5 On a perusal of the impugned order of detention, in particular, the Grounds, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail in the ground case as well as in the adverse case. Admittedly, at the time of passing the Detention Order, the bail applications filed in the ground case as well as in the adverse case, were pending as on the date of passing of 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 baed 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. Therefore, on this ground, the detention order is liable to be set aside.

Further, the detenu was arrested on 06.07.2017 in the ground case ; however the detention order was passed only on 30.09.2017. The delay in passing the Detention Order remains unexplained. It is also one of the grounds which vitiates the Detention order.

6 In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.34/2017 dated 30.09.2017, passed by the second respondent is set aside. The detenu, namely, Yuvraj, son of Gangadurai, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[C.T.S.,J.] [N.S.K.,J.]

17.01.2018

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Internet : Yes

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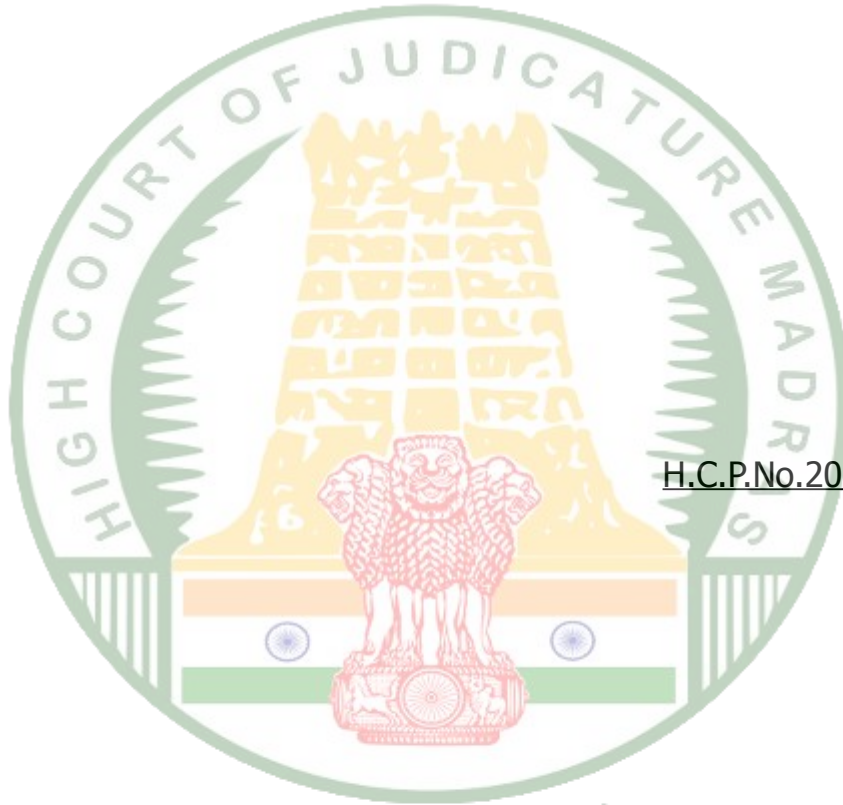
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