

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

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

H.C.P. No.1526 of 2018

Hariharan

... Petitioner

... Vs ...

1. State of Tamilnadu,
Rep. by the Secretary, Home,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.

... 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 detention order in Memo No.415/BCDFGISSSV/2018 dated 21.06.2018 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's brother Thiru.SUDALAI RAJA S/O.SUBRAMANI, aged about 26 years, the detenu, now confined in Central prison, PUZHAI CHENNAI before this Court and set him at liberty.

For Petitioner : Mr.R.Muthukumar

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

ORDER

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

Petitioner is the brother of the detenu namely, Sudalairaja, Son of Subramani, aged 26 years, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in Memo No.415/BCDFGISSSV/2018, dated 21.06.2018.

2. The ground case has been registered against the detenu in Crime No.284/2018 on the file of the Inspector of Police, S-7 Madipakkam Police Station for offences u/s 341, 294(b), 307 & 506(ii) IPC. The detention order has been passed by second respondent in Memo No.415/BCDFGISSSV/2018, dated 21.06.2018.

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 a ground case was registered against the detenu in Crime No.284/2018 for offences u/s 341, 294(b), 307 & 506(ii) IPC subsequently, altered to Sections 341, 294(b), 302 & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Chengalpattu, in CrI.M.P.No.2295/2018. 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 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 Memo No.415/BCDFGISSSV/2018, dated 21.06.2018, passed by the second respondent is set aside. The detenu, namely, Sudalairaja, Son of Subramani, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

Jr1

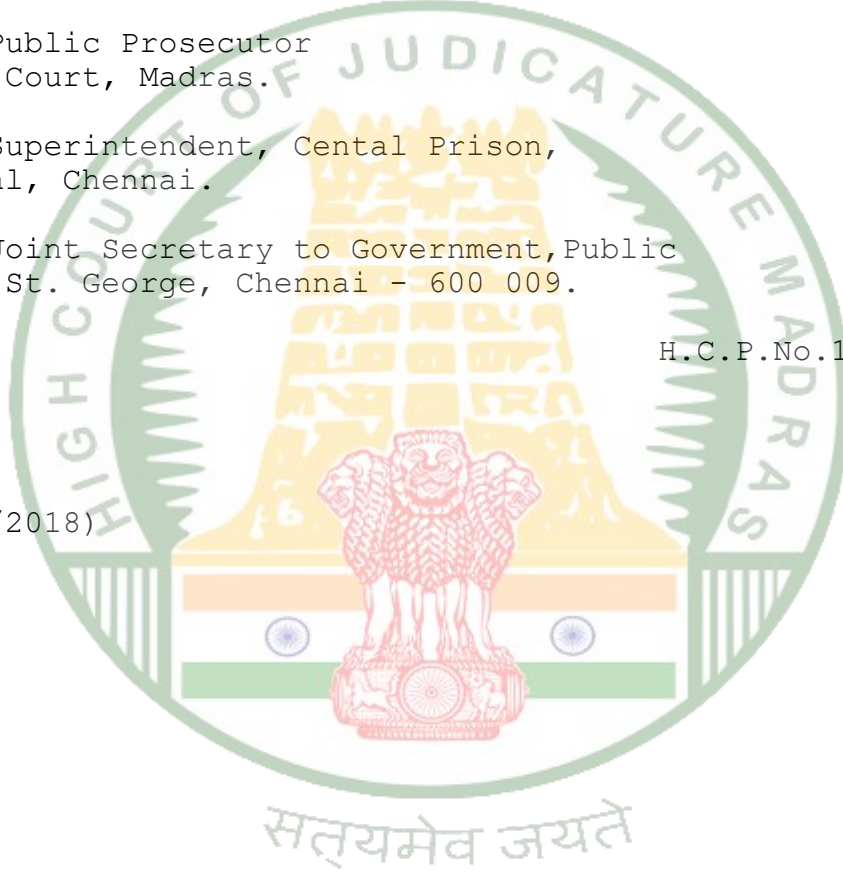
To:

1. The Secretary, Home,
State of Tamilnadu,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
3. The Public Prosecutor
High Court, Madras.
4. The Superintendent, Cental Prison,
Puzhal, Chennai.
5. The Joint Secretary to Government, Public
Fort St. George, Chennai - 600 009.

H.C.P.No.1526 of 2018

SKV (CO)

GMV (10/12/2018)



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