

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1558 of 2018

A.N.Kalaikumari
W/o.M.Balasubramaniam

... Petitioner

-vs-

1.The Government of Tamil Nadu
represented by its
Secretary, Home, Prohibition and
Excise Department,
Secretariat, Chennai - 600009.

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

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for records relating to the proceedings of the second respondent in No.484/BCDFGISSSV/2018 dated 06.07.2018 against petitioner's husband Balu (a) Balasubramaniam S/o.Maasanam, aged about 45 years and quash the same and consequently, direct the respondents herein to produce the detenu, who is detained under Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.R.Alvin Manoj Raj
for M/s.RRN Legal

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

O R D E R

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu Balu @ Balasubramaniam S/o.Masanam, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in No.484/BCDFGISSSV/2018 dated 06.07.2018.

2. The detenu came to adverse notice in Crime No.268/2018 on the file of Central Crime Branch for offences u/s.12(1)(b), 12(2) of Passport Act, 1967 r/w 420, 468 and 471 IPC. The alleged ground case has been registered against the detenu in Crime No.269 of 2018 on the file of Central Crime Branch, for offences u/s.12(1)(b), 12(2) of Passport Act, 1967 r/w 420, 468 and 471 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu is in remand in Crime No.269/2018 on the file of Central Crime Branch and the bail application moved by the detenu in CrI.M.P.No.3089 of 2018 on the file of learned Special Metropolitan Magistrate for CCB and CBCID (Metro) Cases, Chennai, is pending, he had informed that in a similar case bail has been granted by learned Principal Sessions Judge, Chennai, in CrI.M.P.No.10891/2017 and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

'5(ii). ... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by second respondent, detaining the detenu Balu @ Balasubramaniam S/o.Masanam in

No.484/BCDFGISSSV/2018 dated 06.07.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar (CS-VIII)

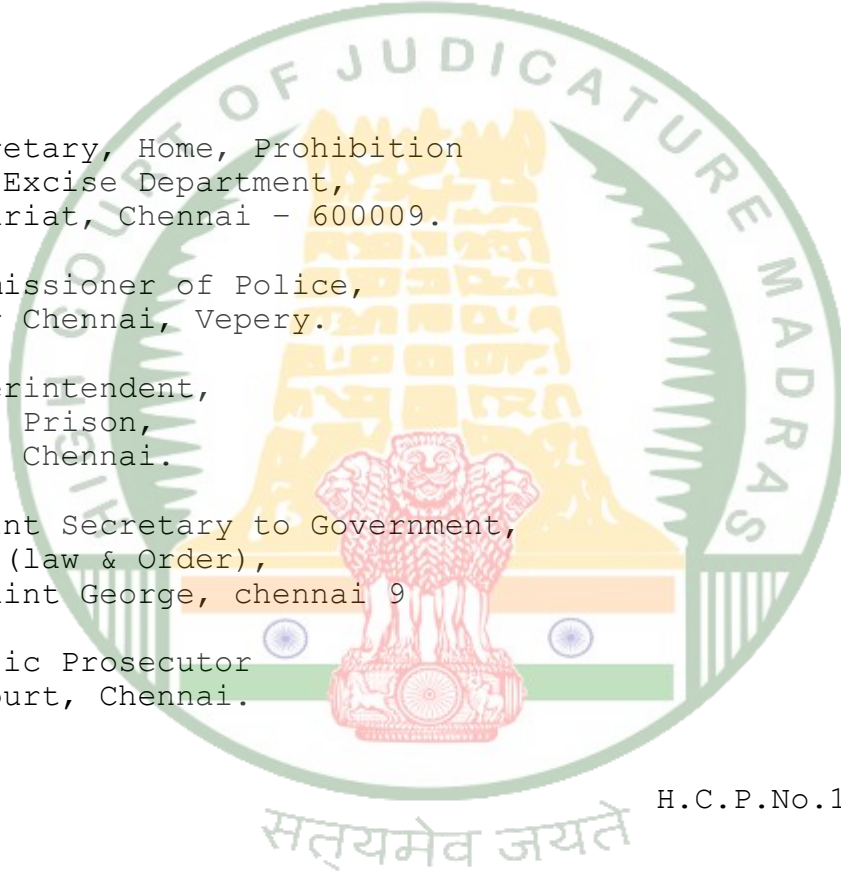
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Sub Assistant Registrar

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To

- 1.The Secretary, Home, Prohibition and Excise Department, Secretariat, Chennai - 600009.
- 2.The Commissioner of Police, Greater Chennai, Vepery.
- 3.The Superintendent, Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government, Public (law & Order), Fort Saint George, chennai 9
- 5.The Public Prosecutor High Court, Chennai.



H.C.P.No.1558 of 2018

SV(CO)
GN(12/11/2018)

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