

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM:

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

H.C.P. No.1566 of 2018

Sumathi

... Petitioner

-Vs-

1.The Commissioner of Police,  
The Office of the Commissioner of Police,  
Greater Chennai, Egmore,  
Chennai - 600 008.

2.The Government of Tamilnadu,  
Rep. By its Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating of the first respondent culminating with the order of detention bearing No.504/BCDFGISSSV/2018 dated 10.07.2018 passed by the first respondent herein detaining my son Thiru.Ashokkumar under Section Act XIV of 1982 and quash the same and direct the respondents to produce the body of the person of the detenu, Thiru.Ashok kumar S/o. David Iruthayaraj, Male aged about 23 years before this Hon'ble Court, now detained in the Central Prison, Puzhal, Chennai and thereby set him at liberty.

For Petitioner : Mr.S.Mohanraj

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

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ORDER

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

The petitioner is the mother of the detenu, namely, Ashokkumar, Son of David Irudhayaraj, aged 23 years, challenges the impugned order of detention, dated 10.07.2018 in BCDFGISSSV No.504/2018 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. The detenu has come to adverse notice in the following cases:-

| S.No. | Police Station & Crime No.                       | Section of Law                                                           |
|-------|--------------------------------------------------|--------------------------------------------------------------------------|
| 1.    | R-1 Mambalam Police Station<br>Crime No.322/2018 | 341, 294(b), 323 & 506(i)<br>IPC @ 341, 294(b), 323,<br>392 & 506(i) IPC |
| 2.    | R-1 Mambalam Police Station<br>Crime No.325/2018 | 341, 294(b), 324, 307 &<br>506(ii) IPC                                   |

The ground case has been registered against the detenu in Crime No.462/2018 on the file of the Inspector of Police, R-1 Mambalam Police Station for offences u/s 341, 294(b), 336, 397, 307, 427 & 506(ii) IPC. The detention order has been passed by first respondent in BCDFGISSSV No.504/2018 on 10.07.2018.

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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.462/2018 for the offences u/s. 341, 294(b), 336, 397, 307, 427 & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Hon'ble High Court of Madras, in CrI.M.P.No.17362/2018. 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 BCDFGISSSV No.504/2018 dated 10.07.2018, passed by the first respondent is set aside. The detenu, namely, Ashokkumar, Son of David Irudhayaraj, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To:

- 1.The Commissioner of Police,  
The Office of the Commissioner of Police,  
Greater Chennai, Egmore,  
Chennai - 600 008.
- 2.The Government of Tamilnadu,  
Rep. By its Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai - 600 009.
- 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.

GMV (14/12/2018)

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