

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE S.RAMATHILAGAM

H.C.P.No.1580 of 2018

Eshwari

... Petitioner

-vs-

1.The State of Tamilnadu,
Rep. By its Secretary to Government,
Prohibition and Excise Department, (Home),
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai - 600 007.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detenu's detention order passed by the 2nd respondent dated 12.07.2018 in BCDFGISSSV: 520/2018 and set aside the same and produce the detenu Thiru.Rajan, male aged about 23 years, S/o. Thirupal, now detained in Central Prison-II, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.Sundararajan

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

O R D E R

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

Petitioner is the mother of the detenu Rajan S/o.Thirupal, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.520/2018 dated 12.07.2018.

2. The alleged ground case has been registered against the detenu in in Crime No.326 of 2018 on the file of J-11 Kannagi Nagar Police Station, for offences u/s.341, 294(b), 336, 392, 397 and 506(ii) 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 was remanded in the ground case and the bail application moved by the detenu in Crl.M.P.No.2694/2018 on the file of Court of Principal District and Sessions Judge at Chengalpattu, is pending, he had informed that in a similar case bail has been granted by the Court of Principal District and Sessions Judge of Kancheepuram at Chengalpattu, in X Crime No.47/2018 in

Crl.M.P.No.336/2018 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.

6.The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the

detenu Rajan S/o.Thirupal in BCDFGISSSV No.520/2018 dated 12.07.2018 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/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamilnadu,
Rep. By its Secretary to Government,
Prohibition and Excise Department, (Home),
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai - 600 007.
3. The Superintendent of Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
Madras High Court,
Chennai.
5. The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9.

सत्यमेव जयते

HCP.No.1580 of 2018

CS/07/01/2019

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