

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM:

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

H.C.P. No.1582 of 2018

Jagatha

... Petitioner

-Vs-

1.The State of Tamil Nadu,  
Rep. By its Secretary to Government,  
Home, Prohibition and Excise Department,  
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 detenu's detention order passed by the 2<sup>nd</sup> respondent in his order No.330/BCDFGISSSV/2017 dated 16.05.2018 approved by the 1<sup>st</sup> respondent and set aside the same and produce the detenu Santhakumar, Male, aged 23 years, S/o. Ganesan, now detained in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.C.C.Chellappan

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

ORDER

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

Petitioner, who is the mother of the detenu, viz., Santha Kumar, Son of Ganesan, aged 23 years, challenges the impugned order of detention, dated 16.05.2018 in No.330/BCDFGISSSV/2018 detaining her son as "GOONDA", as contemplated under Section 2 (f) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, 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.    | B-2 Esplanade Police Station<br>Crime No.138/2018     | 394 @ 395 & 120(b) IPC |
| 2.    | N-3 Muthialpet Police Station<br>Crime No.157/2018    | 392 IPC                |
| 3.    | C-1 Flower Bazaar Police Station<br>Crime No.256/2018 | 392 IPC                |

The ground case has been registered against the detenu in Cr.No.140/2018 on the file of the Inspector of Police, Law and Order, B-2 Esplanade Police Station, for offences u/s 341, 336, 427 r/w 397 & 506(ii) IPC. The detention order has been passed by second respondent in No.330/BCDFGISSSV/2018 on 16.05.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that 3 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.140/2018 for the offences u/s. 341, 336, 427 r/w 397 & 506(ii) IPC. Admittedly, the bail application filed by the detenu in the first adverse case before the Court of Principal Session, Chennai in CrI.M.P.No.7141/2018 and the same was dismissed. 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 detainee 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 No.330/BCDFGISSSV/2018 dated 16.07.2018, passed by the second respondent is set aside. The detenu, namely, Santhakumar, S/o. Ganesan, 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 Secretary,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,  
Greater Chennai,  
Vepery, Chennai.
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.

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GMV (12/12/2018)