

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

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

H.C.P. No.1584 of 2018

Elavarasan

... Petitioner

-VS-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai,
(Goondas Section)
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records relating to the detention order dated 01.06.2018 passed by the second respondent in his proceedings No.363/BCDFGISSSV/2018 and quash the same and direct the respondents herein to produce the petitioner's brother namely Idhayaraja, son of Gopalakrishnan aged about 30 years, residing at No.162, 3rd Street, Thideer Nagar, new Washermenpet, Chennai-600081, who is presently under going detention in the Central Prison, Puzhal, as GOONDA u/s 2 (f) of Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamilnadu Act 14 of 1982) before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.C.Prabakaran

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

ORDER

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

The petitioner, who is the brother of the detenu, namely, Idhayaraja Son of Gopalakrishnan, age 30 years, challenges the impugned order of detention, dated 01.06.2018 in No.363/BCDFGISSSV/2018 detaining his brother 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.	N-2 Kasimedu Police Station Crime No.1054/2017	294(b), 323 IPC and Sec.4 of TNPWH Act 2002 @ 294 (b), 307 IPC @ 302
2.	N-2 Kasimedu Police Station Crime No.489/2018	341, 294(b), 384 & 506(ii) IPC

The ground case has been registered against the detenu in Crime No.505/2018 on the file of the Inspector of Police, N-2 Kasimedu Police Station for offences u/s 341, 294(b), 323, 336, 427, 392 & 506(ii) IPC. The detention order has been passed by second respondent in No.363/BCDFGISSSV/2018 on 01.06.2018.

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 2 adverse case have been registered against the detenu and a ground case was registered against him in Cr.No.505/2018 for the offences u/s. 341, 294(b), 323, 336, 427, 392 & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case as also in the adverse case and the same are pending before the XV! Metropolitan Magistrate Court, George Town in CrI.M.P.Nos.2276/2018 and 2275/2018 respectively. 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.363/BCDFGISSV/2018 dated 01.06.2018, passed by the second respondent is set aside. The detenu, namely, Idhayaraja, Son of Gopalakrishnan, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai,
(Goondas Section)
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.

H.C.P.No.1584 of 2018

srg 14/12/2018