

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM:

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

H.C.P.No.438 of 2018

Settu
S/o.Varadha Gounder ... Petitioner

-Vs-

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
2. The Commissioner of Police,
Greater Chennai City,
Vepery. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 21.02.2018 in No.99/BCDFGISSSV/2018 against the petitioner's brother Kamalakannan, Male, aged 30 years, S/o.Varadha Gounder, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Gopi Krishnan
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 brother of the detenu viz., Kamalakannan S/o.Varadha Gounder, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.99/2018 dated 21.02.2018.

2. The detenu came to adverse notice in the following

cases:-

Sl.No .	Police Station and Crime No.	Sections of Law
1.	S-10, Pallikaranai Police Station, Crime No.2774/2017	457 and 380 IPC
2.	S-15, Selaiyur Police Station, Crime No.1843/2017	454 and 380 IPC
3.	S-10 Pallikaranai Police Station, Crime No.34/2018	457 and 380 IPC
4.	S-10 Pallikaranai Police Station, Crime No.39/2018	457 and 380 IPC
5.	S-10 Pallikaranai Police Station, Crime No.40/2018	457 and 380 IPC
6.	S-10 Pallikaranai Police Station, Crime No.41/2018	457 and 380 IPC

The alleged ground case has been registered against the detenu in Crime No.47 of 2018 on the file of S-14 Selaiyur Police Station for offences under sections 341, 294(b), 392, 397, 336, 427 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3.Amidst several grounds raised, learned counsel for petitioner submits that the detaining authority noticed that detenu stands remanded to judicial custody in cases registered in Crime Nos.1843/2017 and 47/2018 on the file of S-15, Selaiyur Police Station and Crime Nos.2774/2017, 34, 39, 40 and 41/2018 on the file of Pallikaranai Police Station and has moved bail applications in Crime Nos.1843/2017 and 47/2018 on the file of S-15, Selaiyur Police Station and has been granted bail. Though the detenu has been granted bail in both cases, he has failed to offer sureties and hence, he remains at jail. The detaining authority has informed that the relatives of the detenu were taking efforts to move application to take him out on bail in adverse cases registered on the file of S-10 Pallikaranai Police Station 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. Though the detaining authority has informed of an effort by the relatives to move bail petition for the release of the detenu, there is no material to support such contention. The detaining authority has also informed that it was very likely of detenu coming out on bail in Crime Nos.1843/2017 and 47/2018 on the file of S-15 Selaiyur Police Station by offering sufficient sureties.

4. We have heard learned Additional Public Prosecutor on the above submissions and also perused the records.

5. We find that there absolutely is no material which would disclose the likelihood of the relatives of the detenu moving bail petition on his behalf in the adverse cases. Further, there is no material to support that the detenu would offer sufficient sureties in Crime Nos.1843/2017 and 47/2018 on the file of S-15 Selaiyur Police Station. Therefore, the non-application of mind and erroneous subjective satisfaction arrived at by the detaining authority is apparent.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Kamalakannan S/o.Varadha Gounder, made in No.99/BCDFGISSSV/2018 dated 21.02.2018, is quashed and the Habeas Corpus Petition is allowed. 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 VII)

//True Copy//

Sub Assistant Registrar

gm

To

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

H.C.P.No.438 of 2018

PPA(co)

rrs 11/09/2018.