

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.11.2018

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

H.C.P. No.1655 of 2018

Vasantha

...Petitioner/Mother of the Detenu

-Vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, 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 order of detention BCDFGISSSV NO. 547/2018 dated, 19.07.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Sivakumar, S/O.Rajendran, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.A.Nirmal Kumar

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 mother of the detenu, namely, Sivakumar, Son of Rajendran, age 33 years, challenges the impugned order of detention, dated 19.07.2018 in BCDFGISSSV No.547/2018 detaining him 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	R-1 Mambalam Police station Crime No.461/2018	341, 294(b), 384, 506(ii) IPC r/w 120(B) IPC & 25(1)(a) Arms Act, 1959

The ground case has been registered against the detenu in Crime No.437/2018 on the file of the Inspector of Police, J-12 Kanathur Police Station for offences u/s 148, 353, 307, 506(ii) IPC & 25(1-B)(a) r/w 3 of Indian Arms Act 1959. The detention order has been passed by second respondent in BCDFGISSSV No.547/2018 on 19.07.2018.

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 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.437/2018 for the offences u/s.148, 353, 307, 506(ii) IPC & 25(1-B)(a) r/w 3 of Indian Arms Act 1959. Admittedly, the detenu has moved a bail application in the ground case and the same was dismissed in Cr1.MP.No.2506/2018 by Principal District and Sessions Judge, Chengalpattu. Again, he has moved bail application in the ground case and the same is pending before this Court in Cr1.O.P.No.18156/2018. 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.547/2018 dated 19.07.2018, passed by the second respondent is set aside. The detenu, namely, Sivakumar, Son of Rajendran, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai. (In duplicate for Communication to Detenue)
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1655 of 2018

RV (CO)

rrs 14/11/2018

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