

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

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

H.C.P. No.1686 of 2018

V.Venkatesan ... Petitioner/Friend of the
Detenu

-Vs-

1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.Commissioner of Police,
Greater Chennai.

... 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 30.07.2018 in Memo No.605/BCDFGISSSV/2018 against the petitioner's friend Paramasivam, Male aged 38 years S/o. Karuthapandiyan, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

ORDER

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

Petitioner, who is the friend of the detenu, viz., Paramasivam, Son of Karuthapandiyan, aged 38 years, challenges the impugned order of detention, dated 30.07.2018 in BCDFGISSSV No. 605/2018 detaining his friend as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	J-6 Thiruvanniyur Police Station Cr.No. 745/2018	Man Missing

The ground case has been registered against the detenu in Cr.No.803/2018 on the file of J-6 Thiruvanniyur police station for offences u/s 341, 294(b), 323, 427, 397 and 506(ii) IPC. The detention order has been passed by second respondent in BCDFGISSSV No. 605/2018.

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. A perusal of the Grounds of Detention would reveal that 1 adverse case has been registered against the detenu and a ground case came to be registered against him in Cr.No.803/2018 for offences u/s 341, 294(b), 323, 427, 397 and 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal Sessions Court, Chennai, in CrI.M.P.No.12021/2018. 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 passed by the 2nd respondent is set aside. The detenu 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

jas/jrl
To:

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Central Prison,
Puzhal, Chennai.
(In duplicate for communication to the detenu)
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

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srg 10/12/2018

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