

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM:

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

H.C.P. No.1728 of 2018

S.Vani

... Petitioner

-Vs-

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

2.The Commissioner of Police,
Office of the Commissioner of Police, (Goondas Section)
Greater Chennai, Vepery, 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 detention order dated 23.07.2018 and made in vide proceedings in 574/BCDFGISSSV/2018 on the file of 2nd respondent herein and set aside the same and direct the respondents herein to produce Mr.Vijayashankar, S/o.Shankar, aged about 22 years, who is now confined in Central Prison, Puzhal before this Hon'ble High Court and set him liberty.

For Petitioner : Mr.J.Senthamil Arasu

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

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ORDER

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

Petitioner, who is the mother of the detenu, viz., Vijayashankar, Son of Shankar, aged 22 years, challenges the impugned order of detention, dated 23.07.2018 in No.574/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.	P-6 Kodungaiyur Police Station Crime No.113/2017	Man Missing @ 120(B), 342, 302, 201 & 203 IPC r/w 34 IPC

The ground case has been registered against the detenu in Cr.No.947/2018 on the file of the Inspector of Police, P-6 Kodungaiyur Police Station for offences u/s 341, 294(b), 336, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.574/BCDFGISSSV/2018 on 23.07.2018.

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 1 adverse cases has been registered against the detenu and a ground case came to be registered against him in Cr.No.947/2018 for the offences u/s. 341, 294(b), 336, 397 and 506(ii) IPC. Admittedly, the bail application filed by the detenu in the ground case before the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.11322/2018 and the same was dismissed on 18.07.2018. 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 No.574/BCDFGISSSV/2018, dated 23.07.2018, passed by the second respondent is set aside. The detenu, namely, Vijayashankar, Son of Shankar, aged 22 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 to Government, (Home)
Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police, (Goondas Section)
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.

GMV(02/01/2019)

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