

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.1791 of 2018

K.Dilip

... Petitioner

-Vs-

1.Government of Tamilnadu, rep.by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order in BCDFGISSSV No.55/2018 dated 04.08.2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the body of my father Thiru.Kumar, Son of Murugesan, aged about 48 years, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.Hasan Mohammed Jinnah

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER

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

The petitioner is the son of the detenu, namely, Kumar, Son of Murugesan, aged 48 years, challenges the impugned order of detention, dated 04.08.2018 in BCDFGISSSV No.55/2018 detaining his father as "SAND OFFENDER", as contemplated under Section 2 (gg) 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 ground case has been registered against the detenu in Crime No.372/2018 on the file of the Inspector of Police, Chengalpattu Taluk Police Station for offences u/s 294(b), 353, 307, 506(ii) IPC and 430, 379 IPC r/w 3(i) Tamil Nadu Property

(Prevention of Damage & Loss) Act, 1992 r/w 21(i) Mines & Minerals Act. The detention order has been passed by second respondent in BCDFGISSSV No.55/2018 on 04.08.2018.

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 a ground case was registered against him in Cr.No.372/2018 for the offences u/s.294(b), 353, 307, 506(ii) IPC and 430, 379 IPC r/w 3(i) Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 r/w 21(i) Mines & Minerals Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District Sessions Court, Chengalpattu in CrI.M.P.No.2818/2018 on 17.07.2018. 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 BCDFGISSSV No.55/2018 dated 04.08.2018, passed by the second respondent is set aside. The detenu, namely, Kumar, Son of Murugesan, aged about 48 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

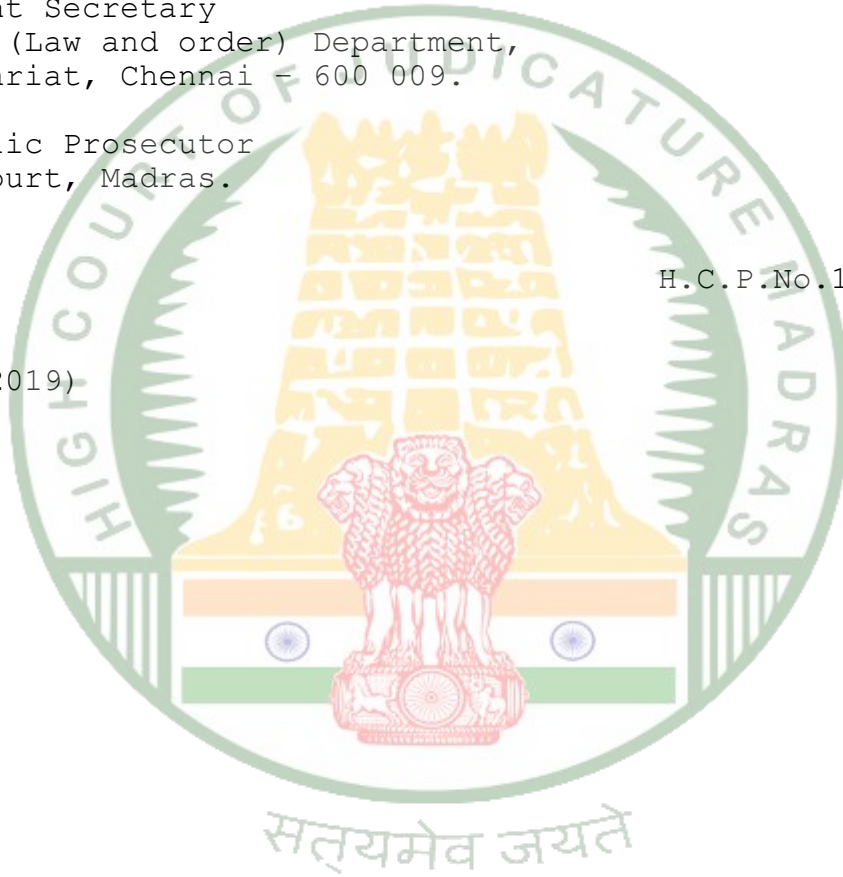
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To:

- 1.The Principal Secretary, Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
- 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.1791 of 2018

SP(04/01/2019)



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