

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.1873 of 2018

D.Eswari

... Petitioner

-Vs-

1.The Commissioner of Police,
Vepery,
Chennai - 600 024.

2.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the 1st respondent in BCDFGISSSV No. 598/2018, dated 27.07.2018 and set aside the same and direct the 1st respondent to produce, the detenu Suresh @ Sori Suresh son of Deenadayalan aged 32 years, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.C.D.Johnson

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

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ORDER

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

The petitioner is the mother of the detenu, namely, Suresh @ Sori Suresh, Son of Deenadayalan, aged 32 years, challenges the impugned order of detention, dated 27.07.2018 in Memo No. 598/BCDFGISSSV/2018 detaining her son 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 Cr.No. 461/2018	341, 294(b), 384, 506(ii) IPC r/w 120(B) IPC & 25(1) (a) of Arms Act

The ground case has been registered against the detenu in Crime No.437/2018 on the file of the Inspector of Police, Law and Order, 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. The detention order has been passed by first respondent in Memo No. 598/BCDFGISSSV/2018, on 27.07.2018.

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 No.437/2018 for offences u/s.148, 353, 307, 506(ii) IPC & 25 (1-B) (a) r/w. 3 of Indian Arms Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Chengalpattu, in CrI.M.P.No.2847/2018. 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 Memo No.BCDFGISSSV No. 598/2018, dated 27.07.2018 , passed by the first respondent is set aside. The detenu, namely, Suresh @ Sori Suresh Son of Deenadayalan, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jas/jrl

To:

- 1.The Commissioner of Police,
Vepery,
Chennai - 600 024.
- 2.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Chennai - 600 009.
- 3.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 5.The Public Prosecutor
High Court, Madras.

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srgm 10/12/2018