

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM:

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

H.C.P. No.1903 of 2018

S.Shakila

...Petitioner

-Vs-

1.State of Tamil Nadu rep. by its
Principal Secretary,
Department of Home, Prohibition
and Excise, Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai Veppary,
Chennai - 600 007.

3. The State rep. by
The Inspector of Police,
S-4, Nandambakkam Police Station,
Chennai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in Memo No.569/BCDFGISSSV/2018 and 23.07.2018 on the file of the 2nd respondent and quash the detention order as illegal and direct the respondents to produce the detenu Manikandan @ Joseph son of Srinivasan, aged about 28 years detenu now confirmed at Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner : Mr.G.Pavendhan

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, Manikandan @ Joseph, Son of Srinivasan, age 28 years, challenges

the impugned order of detention, dated 23.07.2018 in No.569/BCDFGISSSV/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.	S-8 Adambakkam Police station Crime No.351/2018	379 IPC
2.	S-1 St.Thomas Mount Police station Crime No.40/2018	379 IPC
3.	S-1 St.Thomas Mount Police station Crime No.163/2018	379 IPC

The ground case has been registered against the detenu in Crime No.127/2018 on the file of the Inspector of Police, S-4 Nandambakkam Police Station for offences u/s 341, 294(b), 323, 336, 392, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.569/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 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 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.127/2018 for the offences 341, 294(b), 232, 336, 392, 397 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the 3 adverse cases in Crime Nos.351/2018, 40/2018 and 163/2018. 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.569/BCDFGISSSV/2018 dated 23.07.2018, passed by the second respondent is set aside. The detenu, namely, Manikandan @ Joseph, Son of Srinivasan, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

pds

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The Principal Secretary to the Government,
Department of Home, Prohibition
and Excise, Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Veppary,
Chennai - 600 007.
3. The Inspector of Police,
S-4, Nandambakkam Police Station,
Chennai.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 5.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 6.The Public Prosecutor
High Court, Madras.

H.C.P.No.1903 of 2018

kak(26/12/2018)