

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.681 of 2018

Kumutha

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

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

3.The Inspector of Police,
K-1, Sembium Police Station,
Chennai-600 011.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention NO.76/BCDFGISSSV/2018 dated, 12.02.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Muthu@Rowdy Muthu, S/O.Durairaj, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.P.S.Muralidhara Rao

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

O R D E R

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.76/BCDFGISSSV/2018 dated 12.02.2018, whereby the detenu, by name, Muthu @ Rowdy

Muthu, son of Durairaj, aged about 24 years, was ordered to be detained under the provisions 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 of 1982) branding him as a "GOONDA".

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

S.No	Cr.No. & Police Station	Offences
1.	Cr.No.80/2018 K-1 Sembium Police Station	147, 148, 341, 294 (b), 323, 324, 307 IPC

The ground case has been registered against the detenu in Cr.No.84 of 2018 on the file of Inspector of Police, K-1 Sembium Police Station for offences u/s 341, 294(b), 336, 392, 397 and 506(ii) IPC. The detention order has been passed by Second respondent in No.76/BCDFGISSSV/2018.

3. Though many grounds have been raised in the 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.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.84/2018 on 17.01.2018; whereas the detention order was passed on 12.02.2018, i.e. Nearly after a lapse of 26 days. This inordinate delay in passing of detention order would vitiate the same. Further, the Grounds of Detention would reveal that one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.84/2018 for the offences u/s.341, 294(b), 336, 392, 397 and 506(ii) IPC. Admittedly, the bail applications filed by the detenu in the ground case before the learned Principal Sessions Judge, Chennai in CrI.M.P.No.2346/2018 and the same is pending and he has not moved bail application in the adverse case. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the ground case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Hence, we are of the view that the detention order is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.76/BCDFGISSSV/2018 dated 12.02.2018, passed by the second respondent is set aside. The detenu, namely, Muthu @ Rowdy Muthu, son of Durairaj, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

kmi

To

- 1.The Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.
- 3.The Inspector of Police,
K-1, Sembium Police Station,
Chennai-600 011.
- 4.The Public Prosecutor
High Court, Madras.
- 5.The Superintendent
Central Prison, Puzhal,
Chennai.
- 6.The Joint Secretary Government,
Public (Law & Order) Department,
Fort St George, Chennai.

GMV (07/09/2018)

H.C.P.No.681 of 2018