IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

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

H.C.P. No.1922 of 2018

T.Balamurugan

... Petitioner

-Vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 008.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records, related to detenue's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 21.04.2018 on the file of the 2nd respondent herein made in proceedings No.246/BDFGISSSV/2018 quash the same as illegal and consequently direct the respondents herein to produce detenue before this Hon'ble High Court and set him at liberty from detention, now the detenue is detained at Central Prison, Puzhal, Chennai - 600 006.

For Petitioner : Mr.S.Ambedkumar

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

WEB COPY

ORDER

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

The petitioner is the father of detenu, namely, Sarathkumar, Son of Balamurugan, age 24 years, challenges the impugned order of detention, dated 21.04.2018 in No.246/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

https://hcservices.ecourts.gov.in/hcservices/

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.	Otteri Police Station Crime No.319/2017	341, 302, IPC @ 341, 302, 120(b), 147, 148, 114 & 149 IPC
2.	S-6, Sankar Nagar Police Station Crime No.190/2018	294(b), 307, 427 & 506(ii) IPC

The ground case has been registered against the detenu in Crime No.198/2018 on the file of the Inspector of Police, S-6, Sankar Nagar Police Station for offences u/s 294(b), 392, 336, 427, 323, 397 & 506(ii) IPC. The detention order has been passed by second respondent in No.246/BCDFGISSSV/2018 on 21.04.2018.

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 2 adverse case have been registered against the detenu and a ground case was registered against him in Cr.No.198/2018 for the offences u/s.294(b), 392, 336, 427, 323, 397, & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case as also in the adverse case in Crime No.190/2018 and the same are pending before the Principal District and Sessions Judge, Chengalpattu in Crl.M.P.Nos.1560/2018 and 1561/2018 respectively. 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 detenue coming out on bail and the said order was passed without application of mind.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.246/BCDFGISSSV/2018 dated 21.04.2018, passed by the second respondent is set aside. The detenu, namely, Sarathkumar, Son of Balamurugan, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:
1. The Secretary to the Government,
   Home, Prohibition and Excise Department,
   Secretariat, Fort St George, Chennai 600 009.

2.The Commissioner of Police,
   Greater Chennai,
   Vepery, Chennai - 600 008.

3.The Superintendent,
   Central Prison, Puzhal,
   Chennai.
(In duplicate for communication Detentue)

4.The Joint Secretary
   Public (Law and order) Department,
   Secretariat, Chennai - 600 009.

5.The Public Prosecutor
   High Court, Madras.

H.C.P.No.1922 of 2018

CP(CO)
SP(17/12/2018)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/