

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.1931 of 2018

Nithiya @ Pallu Nithiya @ Nithiyanandam ... Petitioner

-Vs-

1.The State of Tamil Nadu

Rep. By the Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat Chennai - 600 009.

2.The Commissioner of Police,

Greater Chennai,
Vepery, Chennai - 600 007.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records, relating to Petitioner's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 21.06.2018 on the file of the second respondent herein made in proceedings BCDFGISSSV No.419/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said Petitioner namely Nithiya @ Pallu Nithiya @ Nithiyanandam, son of Venugopal, aged 28 years before this Hon'ble High Court and set the petitioner at liberty from detention, now Petitioner detained at Central Prison, Puzhal, Chennai - 600 066.

For Petitioner : Mr.C.C.Chelappan

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 detenu, namely, Nithiya @ Pallu Nithiya @ Nithiyanandam, Son of Venugopal, age 28 years, challenges the impugned order of detention, dated 21.06.2018 in No.419/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.	J-6 Thiruvannamiyur Police Station Cr.No.2230/2016	457 and 380 IPC
2.	J-11 Kannaki Nagar Police Station Cr.No.1331/2017,	341, 294 (b), 336, 392 r/w 397, 506(ii) IPC
3.	J-9 Thuraipakkam Police Station Crime No.346/2018	454 and 380 IPC

The ground case has been registered against the detenu in Crime No.234/2018 on the file of the Inspector of Police, J-11 Kannaki Nagar Police Station for offences u/s 341, 294(b), 352, 392 r/w 397 and 506(ii) IPC. The detention order has been passed by second respondent in Memo No.419/BCDFGISSSV/2018 on 21.06.2018.

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.234/2018 for offences u/s 341, 294(b), 352, 392 r/w 397 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the 3rd Adverse case in Crime No.346/2018. 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.419/BCDFGISSSV/2018 dated 21.06.2018, passed by the second respondent is set aside. The detenu, namely, Nithya @ Pallu Nithiya @ Nithiyanandam, Son of Venugopal, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai - 600 007.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Joint Secretary to Government,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1931 of 2018

SV(CO)

rrs 26/12/2018

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