

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.12.2018

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

H.C.P. No.1935 of 2018

Thirumal ... Petitioner/Brother of the Detenue

-Vs-

1.State of Tamil Nadu,
Rep. By the Secretary, Home,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.636/BCDFGISSSV/2018, dated 02.08.2018 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's brother Thirupathi Son of Muthu aged about 32 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's brother Thirupathi Son of Muthu aged about 32 the detenue herein set him liberty.

For Petitioner : Mr.R.Muthukuamr

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 brother of the detenu, namely, Thirupathi, Son of Muthu, age 32 years, challenges the impugned order of detention, dated 02.08.2018 in No.636/BCDFGISSSV/2018 detaining his brother 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.	N-2 Kasimedu Police Station Crime No.1576/2017	341, 294(b), 384, 506 (ii) IPC
2.	T-10 Thirumullaivoyal Police Station Crime No.668/2018	302 IPC

The ground case has been registered against the detenu in Crime No.511/2018 on the file of the Inspector of Police, T-7 Tank Factory Police Station for offences u/s 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. The detention order has been passed by Second respondent in Memo No.636/BCDFGISSSV/2018 on 02.08.2018.

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 two adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.511/2018 for the offences u/s 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case. 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.636/BCDFGISSSV/2018, dated 02.08.2018, passed by the second respondent is set aside. The detenu, namely, Thirupathi Son of Muthu, 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 VI)

//True Copy//

Sub Assistant Registrar

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To:

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

H.C.P.No.1935 of 2018

GJ(CO)

rrs 11/01/2019