

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2018

CORAM

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

H.C.P.No.1948 of 2018

Rani
W/o.Kumar

.. Petitioner

Vs.

1.State of Tamil Nadu,
rep. by the Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

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

.. 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.775/BCDFGISSSV/2017 dated, 15.12.2017 passed by the 2nd respondent and to quash the same and also to direct the detenu Kumar @ Kilai Kumar, S/O. Pandian, 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.T.V.Somasundaram

For Respondents : Mr.M.Mohamed Riyaz

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.775/BCDFGISSSV/2017 dated 15.12.2017, whereby the detenu, by name, Kumar @ Kilai Kumar, son of Pandian, aged about 25 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.1954/2017 H8 Thiruvottiyur Police Station	379 IPC
2.	Cr.No.2039/2017 H8 Thiruvottiyur Police Station	379 IPC
3.	Cr.No.2081/2017 H8 Thiruvottiyur Police Station	379 IPC
4.	Cr.No.2111/2017 H8 Thiruvottiyur Police Station	379 IPC

The ground case has been registered against the detenu in Cr.No.2122/2017 on the file of Inspector of Police, H8 Thiruvottiyur Police Station for offences u/s 341, 336, 294(b), 427, 392, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.775/BCDFGISSSV/2017.

3. We have heard learned counsel for petitioner and the learned Additional Public Prosecutor appearing for respondents.

4. This is the second Habeas Corpus Petition. In the earlier petition, the ground presently raised by petitioner that a portion of the typed set is illegible which adversely affects his right to make an effective representation, has not been canvassed. When documents in the typed set are illegible, opportunity of clear understanding and making effective representation in keeping with Article 22(5) of the Constitution of India, on such understanding is lost and the detenu is deprived thereof. This would vitiate the order of detention. For the aforesaid reasons, this Court would allow the present petition.

5. Further, the Grounds of Detention would reveal that 4 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.2122/2017 for offences u/s 341, 336, 294(b), 427, 392, 397 and 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Villupuram in C.M.P.No.2524/2018. Therefore, the probability of release of the petitioner 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 No.775/BCDFGISSSV/2017 dated 15.12.2017, passed by the second respondent is set aside. The detenu, namely, Kumar @ Kilai Kumar, son of Pandian, aged about 25 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

kmi

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police,
Chennai Police,
Vepery, Chennai-600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.1948 of 2018

CSL/17.10.2018