

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.2006 of 2018

R.Ganesan
S/o.Rajagopal

...Petitioner

-Vs-

1.The District Collector and District magistrate,
Cuddalore District, Cuddalore.

2.The Principal Secretary to the Government
of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9

...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records in No.C3/D.O./54/2018 on the file of the first respondent, quash the detention order 21.08.2018 and direct the production of the detenu Selva @ Chella @ Selvakumar son of Ganesan presently detained at the Central Prison, Cuddalore, under the Tamil Nadu Act 14 of 1982 as a Sand Offender, before this Honourable Court and set him at liberty.

For Petitioner : Mr.A.M.Rahamath Ali

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]

Petitioner is the father of the Selva @ Chella @ Selvakumar S/o.Ganesan, who has been branded as a "Sand Offender" under the Tamil Nadu Act 14 of 1982 and detained under order of the first respondent passed in C3/D.O./54/2018 dated 21.08.2018.

2. The detenu came to adverse notice in the following case:-

Sl.No .	Police Station and Crime No.	Sections of Law
1.	Kadampuliyur P.S. Cr. No.628/2017 31.12.2017	Sec. 21[1] of Mines and Minerals [Development and Regulation] Act 1957 r/w. 379 IPC

The alleged ground case has been registered against the detenu in Crime No.299 of 2018 on the file of Kadampuliyur Police Station for offences under sections 21[1] of Mines and Minerals [Development and Regulation] Act r/w 430, 379, 294(b), 353 & 307 IPC. Aggrieved by the order of detention, the present Writ Petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

4. The detaining authority while noticing that the detenu was remanded in the ground case and the bail application moved by the detenu in Crl.M.P.No.3511 of 2018 on the file of learned District and Sessions Judge, Cuddalore, was dismissed, he had informed that in a similar case bail has been granted by learned Principal Sessions Judge, Cuddalore, in Crl.M.P.No.1214 of 2018 dated 08.03.2018 and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

'5(ii)... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the first respondent, detaining the

detenu Selva @ Chella @ Selvakumar S/o.Ganesan in C3/D.O./54/2018 dated 21.08.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

gm/rst

To

- 1.The District Collector and District magistrate,
Cuddalore District, Cuddalore.
- 2.The Principal Secretary to the Government
of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9
- 3.The Superintendent of Prison,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2006 of 2018

SP(24/01/2019)

सत्यमेव जयते

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