

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM:

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

H.C.P. No.2043 of 2018

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... Petitioner

-Vs-

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai City,
Vepery, Chennai - 7.

3.The Inspector of Police,
J-6 Thiruvanmiyur Police Station,
Chennai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in Memo No.173/BCDFGISSSV/2018 dated 22.03.2018 passed by the 2nd respondent to produce the detenu, who is my brother's son Gopi S/o.Rajan, aged about 28 years has been detained under Act 14 of 1982 as Goonda who is now confined at Central Prison, Puzhal, Chennai before this Hon'ble Court.

For Petitioner : Mr.J.Milton Arul Rajendran

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

ORDER

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

Petitioner, who is the paternal uncle of the detenu, viz., Gopi, Son of Rajan, aged 28 years, challenges the impugned order

of detention, dated 22.03.2018 in BCDFGISSSV No.173/2018 detaining his brother's son as "GOONDA", as contemplated under Section 2(f) 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 14/1982).

2. The detenu has come to adverse notice in the following cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	J-6 Thiruvanniyur Police Station Crime No.984/2016	341, 294(b), 323 & 506 (i) IPC
2.	J-6 Thiruvanniyur Police Station Crime No.335/2017	3(1) of TNPPDL Act
3.	J-6 Thiruvanniyur Police Station Crime No.2859/2017	294(b), 341, 324, 506 (i) IPC @ 294(b), 341, 326 & 506(i) IPC
4.	J-6 Thiruvanniyur Police Station Crime No.226/2016	294(b), 323, 384 & 506 (ii) IPC

The ground case has been registered against the detenu in Cr.No.228/2018 on the file of Inspector of Police, J-6 Thiruvanniyur Police Station for offences u/s 341, 294(b), 323, 392, 397, 427 and 506(ii) IPC. The detention order has been passed by second respondent in BCDFGISSSV No.173/2018 on 22.03.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that 4 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.228/2018 for the offences u/s. 341, 294(b), 323, 392, 397, 427 and 506 (ii) IPC. Admittedly, the bail application filed by the detenu in the 4th adverse in Crime No.226/2018 before the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.No.682/2018 and the same was dismissed on 09.03.2018.

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 BCDFGISSSV No.173/2018, dated 22.03.2018, passed by the second respondent is set aside. The detenu, namely, Gopi, Son of Rajan, aged 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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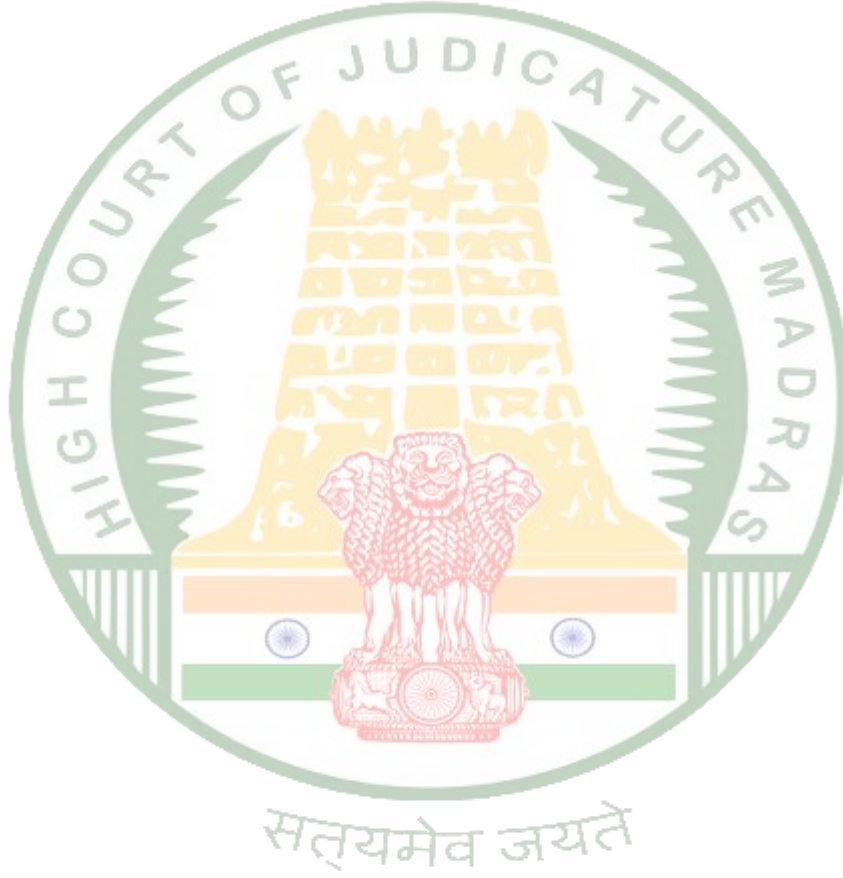
- 1.The Secretary to Government,
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- 3.The Inspector of Police,
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Chennai.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.

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

6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2043 of 2018

GMV (31/12/2018)



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