

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.2051 of 2018

Thangaraj
S/o.Krishnan

.... Petitioner

-Vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

.... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records in connection with the order of Detention passed by the second respondent 01.08.2018 in Memo No.634/BCDFGISSSV/2018 against the petitioner son Praveen Kumar, male aged 53 years S/o. Thangaraj, who is confined at Central Prison Puzal, Chennai and set aside the same and direct the respondents to produce the detenu before the Honourable Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 detenu Praveen Kumar S/o.Thangaraj, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.634/2018 dated 01.08.2018.

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

Sl.No	Police Station and Crime No.	Sections of Law
1.	Somangalam P.S.Cr. No.72/2018	147, 148 and 302 IPC

The alleged ground case has been registered against the detenu in Crime No.994 of 2018 on the file of S-11, Tambaram Police Station for offences under sections 341, 294(b), 336, 427, 506 (ii), 392 and 397 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 both adverse and ground case and the bail application moved by the detenu in Crl.M.P.No.2895/2018 on the file of Principal District and Sessions Judge, Chengalpattu, was pending, he had informed that in a similar case bail has been granted by learned Principal District and Sessions Judge, Kancheepuram, Chengalpattu in Crl.M.P.No.336/2018 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 second respondent, detaining the detenu Praveen Kumar S/o.Thangaraj in BCDFGISSSV No.634/2018

dated 01.08.2018 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.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

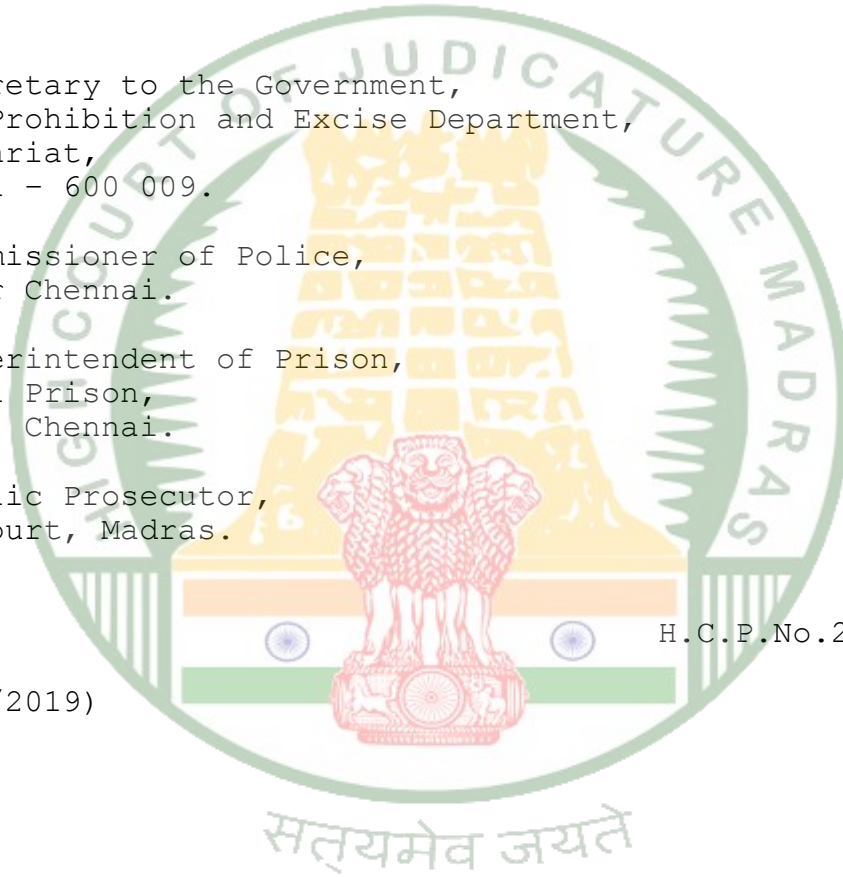
gm/rst

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2051 of 2018

GSP (24/01/2019)



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