

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

H.C.P. No.2070 of 2018

Vadivelu

... Petitioner

-Vs-

- 1.State of Tamil Nadu,
Rep. by the Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Thiruvallur,
Thiruvallur District.

... 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 Memo No.BCDFGISSSV.No.24/2018 dated 04.09.2018 passed by the second respondent under Tamil Nadu 14/1982 and quash the same and direct the respondent to produce the detenu, my Son Prakash (Detenu) now confined in Central Prison, Puzhal, Chennai., before this Hon'ble Court and set the detenu my son Prakash at liberty.

For Petitioner : Mr.P.Kumaresan

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

ORDER

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

The petitioner is the father of the detenu, namely, Prakash, Son of Vadivel, age 28 years, challenges the impugned order of detention, dated 04.09.2018 in BCDFGISSSV No.24/2018 detaining his son as "Sand Offender", as contemplated under Section 2(gg) 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.	Vellavedu Police Station Crime No.553/2018	379, 430 IPC r/w 36(A) MMDR Act

The ground case has been registered against the detenu in Crime No.554/2018 on the file of the Inspector of Police, Vellavedu Police Station for offences u/s. 379, 430, 353, 307 IPC r/w 36 (A) M.M.D.R. Act. The detention order has been passed by second respondent in BCDFGISSSV No.24/2018 on 04.09.2018.

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 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.554/2018 for the offences u/s. 379, 430, 353, 307 IPC r/w 36(A) M.M.D.R. Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District Sessions Court, Tiruvallur in CrI.M.P.No.4455/2018. 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 No.24/BCDFGISSSV/2018 dated 04.09.2018, passed by the second respondent is set aside. The detenu, namely, Prakash, Son of Vadivel, aged about 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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To:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector and District Magistrate,
Thiruvallur,
Thiruvallur District.
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.

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SRG 01/02/2019