

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

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

H.C.P.No.741 of 2018

Indira

.. Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police
Greater Chennai, Chennai.
- 3.Inspector of Police,
N.I.B. CID, Chennai Unit, Chennai.

.. 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 BCDFGISSSV NO.73/2018 dated, 09/02/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Kumaresan, S/O.Mokkaiyan, aged 41 years, 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.R.C.Paul Kanagaraj
For Respondents: Mr.R.Ravichandran
Government Advocate

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 BCDFGISSSV No.73/2018 dated 09.02.2018, whereby the detenu, by name, Kumaresan, son of Mokkaian, aged about 41 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 "DRUG OFFENDER".

2. The ground case has been registered against the detenu in Cr.No.03/2018 on the file of Inspector of Police, N.I.B., C.I.D, Chennai Unit for offence u/s 8(c) r/w 20(b)(ii)(C), 25, 27(A) & 29(1) of NDPS Act. The detention order has been passed by second respondent in BCDFGISSSV No.73/2018.

3. We have heard learned counsel for petitioner and the learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority and the counter affidavit filed by the 2nd respondent.

4. Though many grounds have been raised in the 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. Further, the Grounds of Detention would reveal that a ground case was registered against the detenu in Cr.No.03/2018 for offences u/s 8(c) r/w 20(b)(ii)(C), 25, 27(A) & 29(1) of NDPS Act. Admittedly, the detenu has not moved any bail application in the ground case. 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.73/2018 dated 09.02.2018, passed by the second respondent is set aside. The detenu, namely, Kumaresan, son of Mokkaian, aged about 41 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Deputy Registrar(CS)

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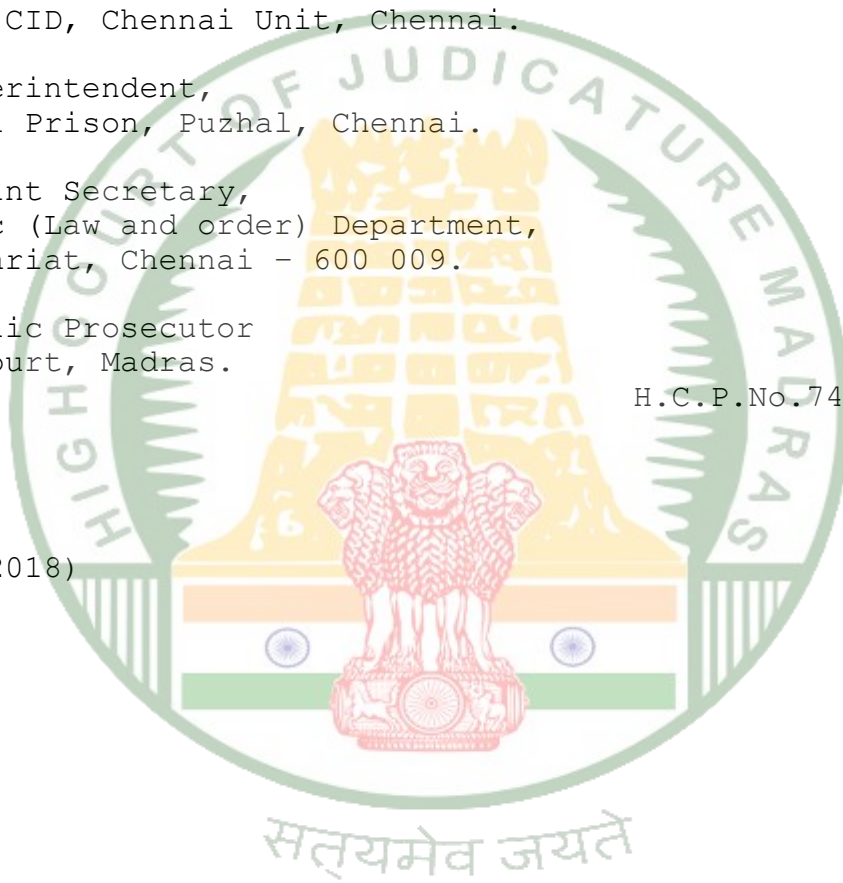
Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police
Greater Chennai, Chennai.
- 3.Inspector of Police,
N.I.B. CID, Chennai Unit, 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.741 of 2018

(CS-DR)
EU(27/11/2018)



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