

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2018

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

H.C.P. No.2206 of 2018

Hari

... Petitioner

-Vs-

1.State of Tamil Nadu,
Represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in Memo No.832/BCDFGISSSV/2018 passed by the 2nd respondent on 14.09.2018, set aside the same and direct the respondents to produce the detenu Hari son of Dharman, aged about 41 years, presently confined in the Central Prison, Puzhal-II, Chennai, before this Hon'ble Court.

For Petitioner : Mr.A.Elumalai

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

ORDER

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

Petitioner, who is the detenu, viz., Hari, Son of Dharman, aged 41 years, challenges the impugned order of detention, dated 14.09.2018 in No.832/BCDFGISSSV/2018 detaining her husband 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.	P-5 M.K.B.Nagar Police Station Crime No.508/2017	147, 148, 341, 294(b), 324, 307 & 506(ii) IPC
2.	P-5 M.K.B.Nagar Police Station Crime No.517/2017	294(b), 323, 336, 397 & 506(ii) IPC
3.	P-5 M.K.B.Nagar Police Station Crime No.1565/2017	341, 294(b), 323, 336, 392, 397, 307 and 506 (ii) IPC r/w Sec.3 of TNPPDL Act 1992
4.	P-5 M.K.B.Nagar Police Station Crime No.706/2018	341, 294(b), 323, 336, 392, 307 and 506(ii) IPC r/w Sec.3 of TNPPDL Act 1992

The ground case has been registered against the detenu in Cr.No.594/2018 on the file of the Inspector of Police, P-3 Vyasarpadi Police Station for offences u/s 341, 294(b), 336, 397, 506(ii) IPC r/w Sec.3 of TNPPDL Act 1992. The detention order has been passed by second respondent in No.832/BCDFGISSSV/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.594/2018 for the offences u/s. 341, 294(b), 336, 397, 506(ii) IPC r/w Sec.3 of TNPPDL Act 1992. Admittedly, the bail application filed by the detenu in the ground case before the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.14963/2018 and the same were dismissed on 05.09.2018. 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.832/BCDFGISSSV/2018, dated 14.09.2018, passed by the second respondent is set aside. The detenu, namely, Hari, Son of Dharman, aged 41 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 Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.
- 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.

H.C.P.No.2206 of 2018

rrs 29/01/2019