

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P. No.2268 of 2018

Jagadeesh

... Petitioner

-Vs-

- 1.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
- 2.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the first respondent herein, setting aside the order of detention passed by the 1st respondent herein in Memo No.829/BCDFGISSSV/2018 dated 12.09.2018, quashing the same and directing the respondents herein to produce the body and person of the detenu by name Abiya Samuvel S/o. Edwin before this Hon'ble Court and setting him at liberty who is now detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.N.MD.Imran Khan

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

ORDER

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

The petitioner, who is the maternal uncle of the detenu, namely, Abiya Samuvel, Son of Edwin, aged 23 years, challenges the impugned order of detention, dated 12.09.2018 in No.829/BCDFGISSSV/2018 detaining his nephew as "GOONDA", as contemplated under Section 2(f) 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 ground case has been registered against the detenu in Crime No.624/2018 on the file of the Inspector of Police, T-3 Korattur Police Station for offences u/s 147, 148, 341, 294(b), 435 & 302 IPC. The detention order has been passed by first respondent in No.829/BCDFGISSSV/2018 on 12.09.2018.

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 a ground case was registered against him in Cr.No.624/2018 for the offences u/s.147, 148, 341, 294(b), 435 & 302 IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Court of Principal District and Sessions Judge, Thiruvallur in CrI.M.P.No.4532/2018. 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.829/BCDFGISSSV/2018 dated 12.09.2018, passed by the first respondent is set aside. The detenu, namely, Abiya Samuvel, Son of Edwin, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

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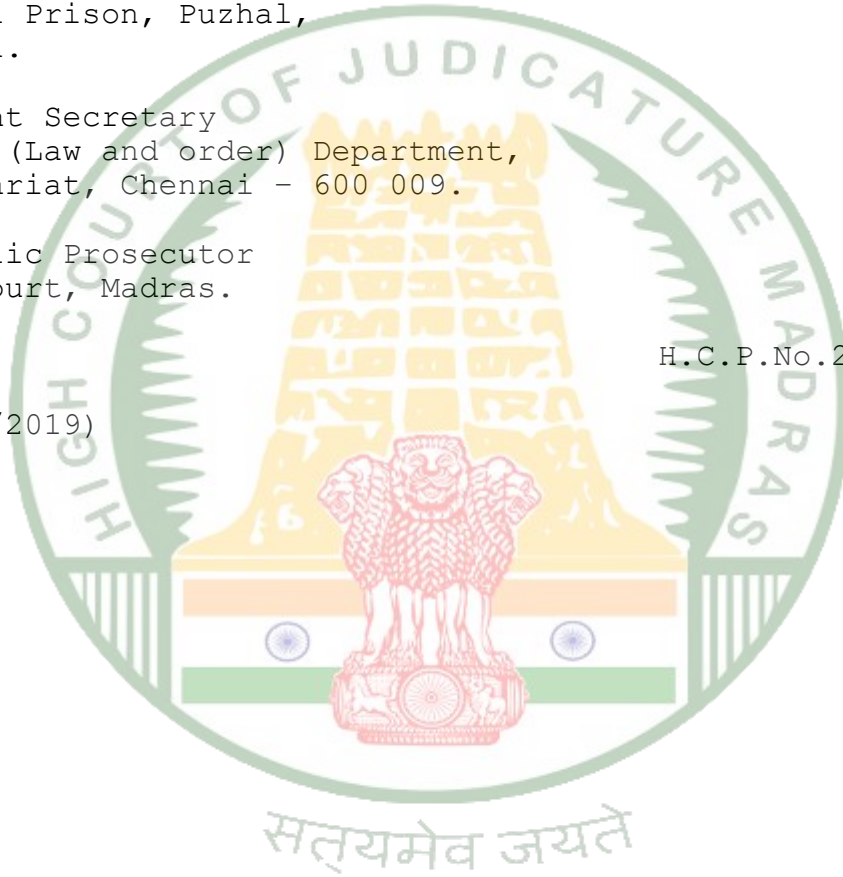
Sub Assistant Registrar

To:

- 1.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
- 2.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
- 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.2268 of 2018

GSP (24/01/2019)



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