

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2018

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

H.C.P. No.2356 of 2018

Prema

... Petitioner

-Vs-

1.State of Tamilnadu,
Rep. by the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Poice,
The Grater Chennai City,
Vepery, Chennai - 600 007.

...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 in Memo No.653/BCDFGISSSV/2018, dated 04.08.2018 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's brother Mohan @ Dharga Mohan S/o.Ellappan aged about 57 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's brother Mohan @ Dharga Mohan S/o.Ellappan aged about 57 years the detenu herein at liberty.

For Petitioner : Mr.T.V.Somasundaram

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

ORDER

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

Petitioner, who is the sister of the detenu, viz., Mohan @ Dharga Mohan, Son of Ellappan, aged 57 years, challenges the impugned order of detention, dated 04.08.2018 in No.653/BCDFGISSSV/2018 detaining her brother 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.	F-1 Chintadripet Police Station Crime No.1005/2017	294(b), 324, 392, 397 and 506(ii) IPC
2.	F-1 Chintadripet Police Station Crime No.134/2018	147, 148, 341, 324, 307 and 506(ii) and Sec.4 of TNPHW Act 2002
3.	F-1 Chintadripet Police Station Crime No.198/2018	294(b), 323, 392, 427 and 506(ii) IPC

The ground case has been registered against the detenu in Cr.No.199/2018 on the file of F-1 Chintadripet Police Station for offences u/s 341, 294(b), 336, 427, 307 and 506(ii) IPC. The detention order has been passed by second respondent in No.653/BCDFGISSSV/2018 on 04.08.2018.

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 3 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.199/2018 for offences u/s. 341, 294(b), 336, 427, 307 and 506(ii) IPC. Admittedly, the bail application filed by the detenu in the ground case before the Principal Sessions Court, Chennai, in CrI.M.P.No.12042/2018 and the same was dismissed on 30.07.2018. 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.653/BCDFGISSSV/2018, dated 04.08.2018, passed by the second respondent is set aside. The detenu, namely Mohan @ Dharga Mohan, Son of Ellappan, aged 57 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,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
- 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.

सत्यमेव जयते

H.C.P.No.2356 of 2018

rrs 11/01/2019

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