

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.2332 of 2018

K.Meera

... Petitioner

-Vs-

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

2.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent dated 03.10.2018 in Memo No.BCDFGISSSV No.76/2018 against the son of the petitioner Dinesh @ Dineshkumar, male aged 34 years, Son of Karthikeyan, who is confined at Central Prison, Cuddalore and set aside the same and consequently direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

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 mother of the detenu, namely, Dinesh @ Dineshkumar, Son of Karthikeyan, age 34 years, challenges the impugned order of detention, dated 03.10.2018 in BCDFGISSSV No.76/2018 detaining her son 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 detenu has come to adverse notice in the following cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Kanchi Taluk Police Station Crime No.15/2016	120-B, 147, 148, 109, 114, 449, 302 & 506(ii) r/w 149 IPC
2.	Siva Kanchi Police Station Crime No.704/2017	294(b), 392 r/w 397 & 506 (ii)

The ground case has been registered against the detenu in Crime No.453/2018 on the file of the Inspector of Police, Siva Kanchi Police Station for offences u/s 294(b), 307, 392 r/w 397 & 506 (ii) IPC and 25(i)(a) of Arms Act r/w 3(i) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. The detention order has been passed by second respondent in BCDFGISSSV No.76/2018 on 03.10.2018.

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 2 adverse case have been registered against the detenu and a ground case was registered against him in Cr.No.453/2018 for the offences u/s.294(b), 307, 392 r/w 397 & 506(ii) IPC and 25(i)(a) of Arms Act r/w 3(i) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the District Sessions Court-II, Kancheepuram in CrI.M.P.No.3349/2018. 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 BCDFGISSSV No.76/2018 dated 03/10.2018, passed by the second respondent is set aside. The detenu, namely, Dinesh @ Dineshkumar, Son of Karthikeyan, aged about 34 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 & District Magistrate,
Kancheepuram District, Kancheepuram.
3. The Superintendent,
Central Prison, Cuddalore.
4. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor
High Court, Madras.

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GSP(02/01/2019)

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