

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.2545 of 2018

K.Kumar

... Petitioner

-Vs-

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

2.District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order made in Memo No.B.C.D.F.G.I.S.S.S.V.No.26/2018 dated on 09.09.2018 by the second respondent and quash the same and direct the respondent to produce the detenu Karthick, S/o.Kumar, 20 years, who is now detained in Borstal School, Pudukottai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.K.Ilavarasan

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 father of the detenu, namely, Karthick, Son of Kumar, aged 20 years, challenges the impugned order of detention, dated 09.09.2018 in B.C.D.F.G.I.S.S.S.V.No.26/2018 detaining his son as "Sand Offender", as contemplated under Section 2(gg) 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.309/2018 on the file of the Pullarambakkam Police Station for offences u/s. 379, 430 IPC r/w 21(1) MMDR Act. The detention order has been passed by second respondent in B.C.D.F.G.I.S.S.S.V.No.26/2018 on 09.09.2018.

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.309/2018 for the offences u/s.379, 430 IPC r/w 21(1) MMDR Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Judicial Magistrate No-I Court, Tiruvallur in CrI.M.P.No.3670/2018. 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 B.C.D.F.G.I.S.S.S.V.No.26/2018 dated 09.09.2018, passed by the second respondent is set aside. The detenu, namely, Karthick, Son of Kumar, aged about 20 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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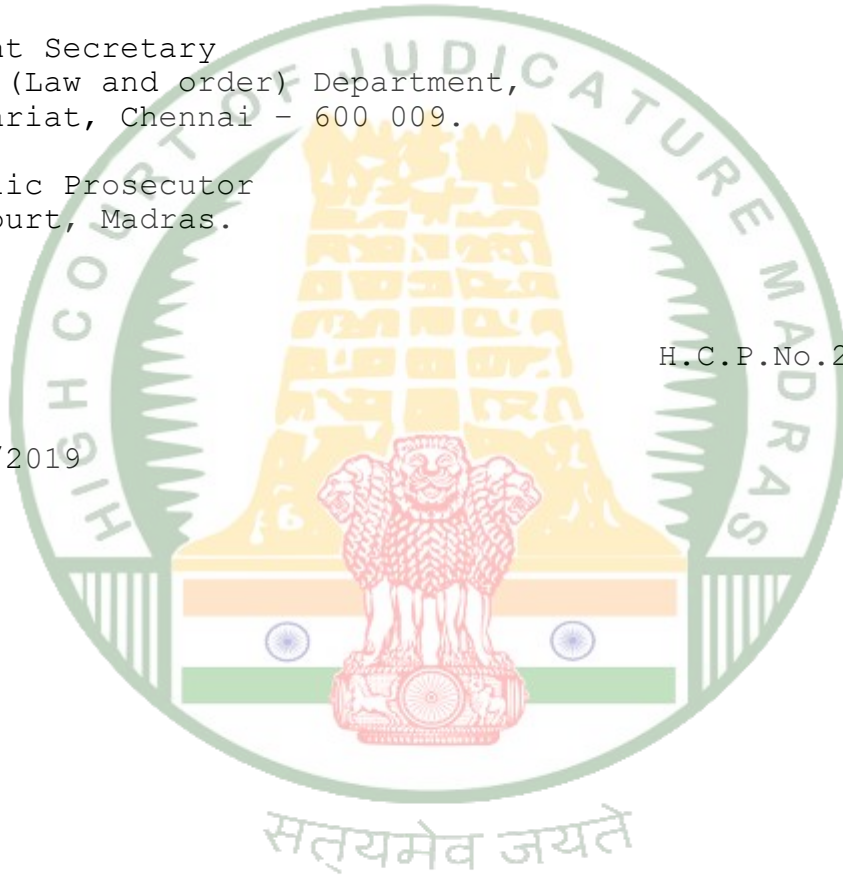
Sub Assistant Registrar

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
- 2.District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.
- 3.The Superintendent,
Borstal School, Pudukottai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2545 of 2018

srg 25/01/2019



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