

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM:

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

H.C.P. No.2656 of 2018

Rani

... Petitioner

-Vs-

1.The Government of Tamil Nadu, rep by its,  
Secretary, Home, Prohibition,  
and Excise (XVI) Department,  
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,  
Office of Commissioner of Police,  
Greater Chennai,  
Veppery, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order Memo No.122/BCDFGISSSV/2018, dated 01.03.2018, on the file of the 2<sup>nd</sup> respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son Vinayagamoorthy aged about 24 years, the detenu now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.K.Kannan

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, viz, Vinayagamoorthy, Son of Nagalingam, age 24 years, challenges the impugned order of detention, dated 01.03.2018 in BCDFGISSSV No.122/2018 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 case:-

| S.No. | Police Station & Crime No.                                  | Section of Law                       |
|-------|-------------------------------------------------------------|--------------------------------------|
| 1.    | Thazhambur Police Station, Kancheepuram, Crime No.225/2016. | U/s.307 IPC @ 450, 34, 396 & 397 IPC |

The ground case has been registered against the detenu in Crime No.234/2018 on the file of the Inspector of Police, S10 Pallikaranai Police Station for offence u/s 397 IPC. The detention order has been passed by second respondent in BCDFGISSSV No.122/2018 on 01.03.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.234/2018 for the offence u/s.397 IPC. Admittedly, the detenu has moved bail application in the ground case is pending before the Principal District and Sessions Court, Chengalpattu in Crl.M.P.No.795/2018. 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 detenue 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.122/2018 dated 01.03.2018, passed by the second respondent is set aside. The detenu, namely, Vinayagamoorthy, Son of Nagalingam, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Government of Tamil Nadu, rep by its,  
Secretary, Home, Prohibition,  
and Excise (XVI) Department,  
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,  
Office of Commissioner of Police,  
Greater Chennai,  
Veppery, Chennai.
- 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.2656 of 2018

AK(CO)  
GSP(09/01/2019)

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