

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH  
and  
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.216 of 2019

Kalaivanan

.. Petitioner

Vs

1.The State of Tamil Nadu  
Represented by the Secretary, Home,  
Prohibition and Excise Department,  
Fort St. George, Chennai - 600 009.

2. The Commissioner of Police,  
Greater Chennai  
Vepery, Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records relating to the detention order in Memo No.1141/BCDFGISSSV/2018 dated 18.12.2018 passed by the 2<sup>nd</sup> respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the detenu Kalaivanan, S/o Ramu, Male, aged about 28 years, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner liberty.

For Petitioner... Mr.P. Parthipan

For Respondents.. Mr.C.Iyyappa Raj,  
Addl. Public Prosecutor

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ORDER

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The petitioner viz., Kalaivanan, aged about 23 years, who is the detenu, has been detained by the second respondent by his order in No.1141/BCDFGISSSV/2018 dated 18.12.2018, holding him to be a "GOONDA", as contemplated under Section 2(b) of Tamil

Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. The Detaining Authority namely, the 2<sup>nd</sup> respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in three cases and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that though there was no bail application pending in Crime No.1345 of 2018 on the file of H-8, Thiruvottiyur Police Station, the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which case there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

5. The learned Additional Public prosecutor would submit that the relatives of the detenu were taking steps to file bail application in connection with the case in Crime No.1345/2018.

6. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in Crime No.1345/2018 on the file of H-8, Thiruvottiyur Police Station. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority to show that the relatives were taking steps to file application seeking bail. Full details as to who are those relatives, who were taking steps to file bail application also have not been mentioned. Thus, in our considered view, without making proper application of mind relating to these facts, the detaining authority has passed the detention order. Therefore, we are inclined to set aside the same.

7. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Memo No. 1141/BCDFGISSSV/2018 dated 18.12.2018 is set aside and the detenu namely, Kalaivannam, S/o Ramu aged about 28

years, who is confined at Central Prison, Puzhal, Chennai is set at liberty forthwith unless his detention is required in connection with any other case proceedings.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,  
State of Tamil Nadu,  
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 to Government,  
Public (law & Order),  
Fort Saint George, chennai 9
- 5.The Public Prosecutor,  
High Court, Madras.

H.C.P.No.216 of 2019

GN(08/07/2019)

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