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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

Coram

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

H.C.P. No. 623 of 2019

V.Elumalai @ Raja

... Petitioner

-vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
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, to issue a Writ of Habeas Corpus, to call for the records in Memo No.564/BCDFGISSSV/2018 on the file of the second respondent, quash the detention order dated 21.07.2018 and direct the respondent to produce of detenu V. Elumalai @ Raja Son of Venkatesan detained at Central Prison, Puzhal, under the Tamil nadu Act 14 of 1982 before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.K.Ganesh

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

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, V. Elumalai @ Raja Son of Venkatesan, aged 25 years, is the detenu. The detenu has been detained by the second respondent by his Memo No.564/BCDFGISSSV/2018 dated 21.07.2018, holding to be a "Goonda", as contemplated under Section 2(f) 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.

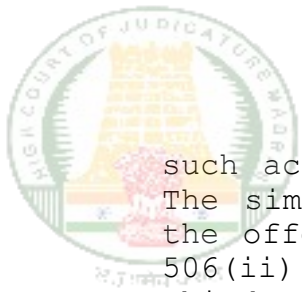
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3. The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the second and third adverse cases are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4. For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 4 of the grounds of detention are extracted below:

"4. I am aware that Thiru Elumalai @ Raja is in remand in T-12 Poonamallee Police Station Crime Nos.734/2018, 747/2018 and 753/2018. He has not moved any bail application for T-12 Poonamallee Police Station Crime Nos.734/2018, 747/2018 and 753/2018 so far. The sponsoring authority has stated that the relatives of Thiru Elumalai @ Raja is taking action to take him out on bail by filing bail application for T-12 Poonamallee Police Station Crime Nos.734/2018, 747/2018 and 753/2018 before the appropriate court. It is pertinent to note that in a case registered at K-11, C.M.B.T. Police Station Cr.No.212/2016 under Section 379 IPC bail was granted by the Court of V Metropolitan Magistrate Court, Egmore, Chennai - 03 in CrI.M.P.No.620/2016. It is pertinent to note that in a similar case registered at P-6 Kodungaiyur Police Station Cr.No.656/2016 under Sections 341, 294(b), 392, 336, 427, 397 and 506(ii) IPC bail was granted by the Court of Principal Sessions at Chennai in CrI.M.P.No.5852/2016. Hence, I infer that there is real possibility of his coming out on bail in T-12 Poonamallee Police Station Crime Nos.734/2018, 747/2018 and 753/2018 by filing bail application before the appropriate court since in similarly placed cases bails are granted by courts after a lapse of time....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in P-6 Kodungaiyur Police Station Cr.No.656/2016 for the offence under Sections 341, 294(b), 392, 336, 427, 397 and 506(ii) IPC and bail was granted by the Principal Sessions Court, Chennai in CrI.M.P.No.5852/2016 and therefore, there is a real possibility of the detenu coming out on bail and indulge in



such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences under Sections 341, 294(b), 392, 336, 427, 397 and 506(ii) IPC whereas the offences involved in the second and third adverse cases are under Sections 379 and 341 and 392 IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.564/BCDFGISSSV/2018 dated 21.07.2018, passed by the second respondent is set aside. The detenu, V. Elumalai @ Raja Son of Venkatesan, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:

1. The Secretary,
Home, Prohibition and Excise Department,
Secretariat, 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. St. George, Chennai 9
5. The Public Prosecutor,
High Court, Madras.

CNR (CO)
CB(20/09/2019)

H.C.P. No. 623 of 2019