

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

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THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P.No.1963 of 2018

Senmon

.. Petitioner

Vs.

1. State of Tamil Nadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in relation to the detention order in No.662/BCDFGISSSV/2018 dated 06.08.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Selvam @ Kumar @ Katta Kumar, Son of Muthu, aged about 54 years, now confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by C.T.SELVAM, J]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.662/BCDFGISSSV/2018 dated 06.08.2018, whereby the detenu, by name, Selvam @ Kumar @ Katta Kumar, Son of Muthu, aged about 54 years, was ordered to

be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "DRUG OFFENDER".

2. The ground case has been registered against the detenu in Cr.No.647/2018 on the file of Inspector of Police, H3 Tondiarpet Police Station, for offences u/s 8(c) r/w 20(b) (ii) (C) of NDPS Act, 1985. The detention order has been passed by second respondent in No.662/BCDFGISSSV/2018 on 06.08.2018.

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

4. Though many grounds have been raised in the 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. Further, the Grounds of Detention would reveal that a ground case was registered against the detenu in Cr.No.647/2018 for offences u/s 8(c) r/w 20(b) (ii) (C) of NDPS Act, 1985. Admittedly, the detenu has moved bail application in the ground case before the learned Special Judge for NDPS Court, Chennai in CrI.M.P.No.567/2018 and the same was granted and he is yet to offer sufficient sureties. 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 No.662/BCDFGISSSV/2018 dated 06.08.2018, passed by the second respondent is set aside. The detenu, namely, Selvam @ Kumar @ Katta Kumar, son of Muthu,

aged about 54 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 Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office,
Vepery, Chennai-600 007.
- 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.1963 of 2018

CSL/13.02.2019

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