

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

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

H.C.P.No.2034 of 2018

K.Indira

.. Petitioner

Vs.

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

2.The State of Tamilnadu,
Rep. by the Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section), 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 entire records relating to the impugned order of detention passed by the 2nd respondent in No.554/BCDFGISSSV/2018 dated 19.07.2018 and set aside the same and consequently direct the respondents to produce the detenu, Nagarajan @ Thavalai, petitioner's son now confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.P.Thiyagaraj

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.554/BCDFGISSSV/2018 dated 19.07.2018, whereby the detenu, by name, Nagarajan @ Thavalai, son of Krishnan, aged about 22 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 "GOONDA".

2. The detenu has come to adverse notice in the following cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	P-1 Pulianthope Police Station Crime No.2606/2014	341, 294(b), 324, 506 (ii) IPC @ 147, 148, 341, 294(b), 324 & 506 (ii) IPC
2.	K-8 Arumbakkam Police Station Crime No.916/2016	379 IPC
3.	V-4 Rajamangalam Police Station Crime No.1238/2017	454, 380 IPC
4.	K-8 Arumbakkam Police Station Crime No.41/2018	379 IPC

The ground case has been registered against the detenu in Cr.No.500/2018 on the file of Inspector of Police, V-4 Rajamangalam Police Station, for offences u/s. 341, 294(b), 336, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.554/BCDFGISSSV/2018 on 19.07.2018.

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.500/2018 for offences u/s. 341, 294(b), 336, 397 & 506(ii) IPC. Admittedly, the detenu has moved bail applications in the ground case before the Court of Principal Sessions Judge, Chennai in CrI.M.P.No.11334/2018 as also in the 3rd adverse case Crime No.1238/2017 before the Court of 13th Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.3417/2018 and the same were 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.554/BCDFGISSSV/2018 dated 19.07.2018, passed by the second respondent is set aside. The detenu, namely, Nagarajan @ Thavalai, son of Krishnan, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

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Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section), 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.2034 of 2018

SSM(14/02/2019)