

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM:

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

H.C.P. No.2134 of 2018

Thanikachalam
W/o.Rajavel

... Petitioner

-Vs-

1.The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat,
Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the second respondent 06.08.2018 in Memo No.665/BCDFGISSSV/2018 against the petitioner son Murugan, male aged 37 years S/o.Thanigachalam, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

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

ORDER

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

The petitioner, who is the father of the detenu, namely, Murugan, Son of Thanigachalam, age 37 years, challenges the impugned order of detention, dated 06.08.2018 in No.665/BCDFGISSSV/2018 detaining his son as "GOONDA", as contemplated under Section 2(f) 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 14/1982).

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

S.No.	Police Station & Crime No.	Section of Law
1.	T-1 Ambattur Police Station Crime No.1412/2018	324, 307 IPC
2.	T-2 Ambattur Estate Police Station Crime No.620/2018	341, 392, 397 IPC

The ground case has been registered against the detenu in Crime No.1424/2018 on the file of the Inspector of Police, T-1 Ambattur Police Station for offences u/s 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.665/BCDFGISSSV/2018 on 06.08.2018.

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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.1424/2018 for the offences u/s.341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case and the same was dismissed on 26.07.2018 by the Principal District and Sessions Court, Thiruvallur in CrI.M.P.No.3612/2018. 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 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.665/BCDFGISSSV/2018 dated 06.08.2018, passed by the second respondent is set aside. The detenu, namely, Murugan, Son of Thanigachalam, aged about 37 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

lpp/kmi

To:

- 1.The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat,
Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison,
Puzhal, Chennai-66.

सत्यमेव जयते

H.C.P.No.2134 of 2018

srg 14/02/2019

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