

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM:

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

H.C.P. No.2342 of 2018

Elaiyavanan

... Petitioner

-Vs-

1.State rep by Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in BCDFGISSSV No.732/2018 passed by the second respondent on 21.08.2018 set aside the same and direct the respondents to produce the Ganesh, Son of Elaiyavanan, aged 24 years, who is now detained in Central Prison, Puzhal, Chennai -66 before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.Swamidoss Manikaran

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

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ORDER

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

The petitioner, who is the father of the detenu, namely, Ganesh, Son of Elaiyavanan, aged 24 years, challenges the impugned order of detention, dated 21.08.2018 in BCDFGISSSV No.732/2018 detaining his son as "DRUG OFFENDER", as contemplated under Section 2(e) of the Tamil Nadu Prevention of

dangerous activities of Boot leggers, 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	R-7 K.K.Nagar Police Station Crime No.490/2018	454 & 380 IPC

The ground case has been registered against the detenu in Crime No.327/2018 on the file of the Inspector of Police, R-10 MGR Nagar Police Station for offences u/s. 8(c) r/w 20(b)(ii) (B) of NDPS Act, 1985. The detention order has been passed by second respondent in BCDFGISSSV No.732/2018 on 21.08.2018.

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 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.327/2018 for the offences u/s. 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985. Admittedly, the detenu has not moved any bail application in the adverse case Crime No.490/2018. 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 BCDFGISSSV No.732/2018 dated 21.08.2018, passed by the second respondent is set aside. The detenu, namely, Ganesh, Son of Elaiyavanan, aged about 24 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 & Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
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.

GMV (14/02/2019)

सत्यमेव जयते

H.C.P.No.2342 of 2018

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