

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM:

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

H.C.P.No.2392 of 2018

Shanthi

... Petitioner

-Vs-

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

2.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 Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in No.854/BCDFGISSSV/2018 dated 19.09.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's husband namely Durai, son of Sekar, aged about 26 years detained in Central Prison, Puzhal, Chennai, before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.S.Mohamed Ansar

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Durai, aged 26 years, challenges the impugned order of detention, dated 19.09.2018 in No.854/BCDFGISSSV/2018 detaining her husband 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.	K-11 CMBT Police Station Crime No.996/2018	379 IPC
2.	K-10, Koyambedu Police Station Crime No.928 of 2018	379 IPC

The ground case has been registered against the detenu in Cr.No.933/2018 on the file of K-10, Koyambedu Police Station, for offences u/s 341, 294(b), 336, 427, 392 r/w 397 and 506 (ii) IPC. The detention order has been passed by second respondent in No.854/BCDEGISSSV/2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.933/2018 for the offences u/s.341, 294(b), 336, 427, 392 r/w 397 and 506 (ii) IPC. Admittedly, the bail application filed by the detenu in the ground case before the learned Principal Sessions Judge, Chennai, in CrI.M.P.No.15336/2018 and the same was dismissed on 12.09.2018. 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 detenue 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 Proceedings in No.854/BCDFGISSSV/2018, dated 19.09.2018, passed by the second respondent is set aside. The detenu, namely, Durai, S/o. Sekar, aged 26 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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, 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, सतयमेव जयते
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

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CSL/13.02.2019