

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.2415 of 2018

Syed Jamal
S/o.Syed Kadar

... Petitioner

-Vs-

1.The Secretary to the Government,
Home Prohibition and Excise Department,
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, call for the records in connection with the order of detention passed by the second respondent dated 17.09.2018 in Memo No.844/BCDFGISSSV/2018 against the petitioner son Syed Abbas, aged 37 years S/o.Syed Jamal, who is confined at Central Prison Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this 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, Syed Abbas, Son of Syed Jamal, age 37 years, challenges the impugned order of detention, dated 17.09.2018 in No.844/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 ground case has been registered against the detenu in Crime No.426/2018 on the file of the Inspector of Police, K2 Ayanavaram Police Station, for offences u/s 147, 148, 341, 353, 332, 307, 302, 336, 506(ii) IPC & Section 20 of Arms Act 1959. The detention order has been passed by second respondent in No.844/BCDFGISSSV/2018 on 17.09.2018.

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 a ground case was registered against him in Cr.No.426/2018 for the offences u/s.147, 148, 341, 353, 332, 307, 302, 336, 506(ii) IPC & Section 20 of Arms Act 1959. Admittedly, the detenu has not moved any bail application in the ground case. 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.844/BCDFGISSSV/2018 dated 17.09.2018, passed by the second respondent is set aside. The detenu, namely, Syed Abbas, Son of Syed Jamal, 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

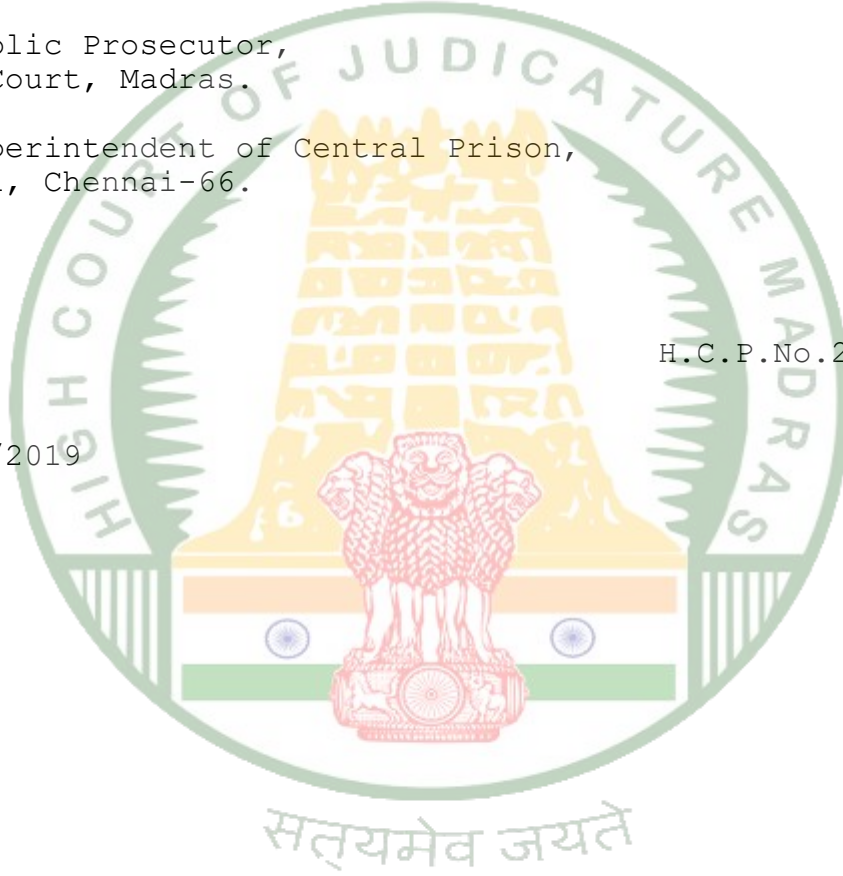
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To

- 1.The Secretary to the Government,
Home Prohibition and Excise Department,
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.

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srg 14/02/2019



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