

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM:

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

H.C.P. No.2597 of 2018

Malarkodi

... 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, to call for the records in No.907/BCDFGISSSV/2018 dated 03.10.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Krishnan, son of Ravi, aged about 24 years, who is confined at Central Prison, Puzhal, Chennai before this Hon'ble Court at set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 aunt of the detenu, namely, Krishnan, Son of Ravi, age 24 years, challenges the impugned order of detention, dated 03.10.2018 in No.907/BCDFGISSSV/2018 detaining her cousin 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.	V-3, J.J.Nagar Police Station Crime No.363/2018	450, 342, 323, 307, 506(ii) IPC @ 450, 342, 323, 506(ii), 302 IPC

The ground case has been registered against the detenu in Crime No.365/2018 on the file of the Inspector of Police, V-3, J.J.Nagar Police Station, for offences u/s 341, 294(b), 323, 336, 392, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.907/BCDFGISSSV/2018 on 03.10.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against the detenu in Cr.No.365/2018 for the offences u/s 341, 294(b), 323, 336, 392, 397 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case as also in the adverse 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.907/BCDFGISSSV/2018 dated 03.10.2018, passed by the second respondent is set aside. The

detenu, namely, Krishnan, Son of Ravi, 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

mst

To:

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, 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 (08/02/2019)

सत्यमेव जयते

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