

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM:

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

H.C.P. No.2675 of 2018

Karthikeyan

... Petitioner

-Vs-

1.The Addl. Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George, Chennai - 9.

2.The Commissioner of Police/Detaining Authority,
Greater Chennai, Chennai - 7.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention against Thangavelsamy @ Thangamin No.759/BCDFGISSSV/2018, dated 25.08.2018 on the file of the second respondent herein and quash the said order and direct the respondents herein to produce the body of my son namely Thangavelsamy @ Thangam, S/o. Karthikeyan, aged about 22 years, now confined at Central Prison, Puzhal, Chennai - 600 006, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.Gangadaran

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

ORDER

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

The petitioner is the father of the detenu, namely, Thangavelsamy @ Thangam , Son of Karthikeyan, aged 22 years, challenges the impugned order of detention, dated 25.08.2018 in No.759/BCDFGISSSV/2018 detaining his son as "GOONDA", as contemplated under Section 2(f) 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.	Palayamkottai Police Station Crime No.163/2015	341, 294(b), 307 & 506(ii) IPC
2.	T-4 Maduravoyal Police Station Crime No.1291/2017	392 IPC @ 120(b), 397 IPC

The ground case has been registered against the detenu in Crime No.334/2018 on the file of the Inspector of Police, T-4 Maduravoyal Police Station for offences u/s. 341, 294(b), 323, 397, 336, 427 & 506(ii) IPC. The detention order has been passed by second respondent in No.759/BCDEFGISSV/2018 on 25.08.2018.

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.334/2018 for the offences u/s. 341, 294(b), 323, 397, 336, 427 & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case Cr.No.334/2018 as also in the second adverse case Cr.No.1291/2018 and the same are pending before the Principal District & Sessions Judge, Thiruvallur in CrI.M.P.Nos.4191/2018 and 4192/2018 respectively. 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.759/BCDFGISSSV/2018 dated 25.08.2018, passed by the second respondent is set aside. The detenu, namely, Thangavelsamy @ Thangam, Son of Karthikeyan, aged about 22 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

kkn

To:

- 1.The Addl. Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George, Chennai - 9.
- 2.The Commissioner of Police/Detaining Authority,
Greater Chennai, Chennai - 7.
- 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.

+1cc to Mr.K.Gangadaran, Advocate, S.R.No.1537

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GSP (01/02/2019)

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