

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.2900 of 2018

Sivasankaran

... Petitioner

-Vs-

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Police/Detaining Authority
Greater Chennai City,
Office of the Commissioner of Police (Goondas Section),
Vepery, Chennai - 600 007. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 26.11.2018 on the file of the second respondent herein made in proceedings Memo No.BCDFGISSSV No.1076/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Mugunthan @ Dhayalan, S/o.Sivasankaran, aged 24 years before this Hon'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.R.Sasikumar

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, Mugunthan @ Dhayalan, Son of Sivasankaran, aged 24 years, challenges the impugned order of detention, dated 26.11.2018 in BCDFGISSSV No.1076/2018 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.	S-6 Sankar Nagar Police Station Crime No.200/2018	392 IPC @ 397 IPC
2.	S-6 Sankar Nagar Police Station Crime No.896/2018	384 IPC

The ground case has been registered against the detenu in Crime No.900/2018 on the file of the Inspector of Police, S-6 Sankar Nagar Police Station for offences u/s. 341, 294(b), 397, 336, 427 and 506(ii) IPC. The detention order has been passed by second respondent in BCDFGISSSV No.1076/2018 on 26.11.2018.

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.900/2018 for the offences 341, 294(b), 397, 336, 427 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the second adverse case Crime No.896/2018. 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.1076/2018 dated 26.11.2018, passed by the second respondent is set aside. The detenu, namely, Mugunthan @ Dhayalan, Son of Sivasankaran, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

kkn

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police/Detaining Authority
Greater Chennai City,
Office of the Commissioner of Police (Goondas Section),
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.

+1cc to Mr.R.Sasikumar, Advocate, S.R.No.6881

H.C.P.No.2900 of 2018

kak (27/02/2019)