

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.09.2018
CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1276 of 2018

Arumugam
S/o.Ethiraj ... Petitioner

-vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.District Collector
District Magistrate,
Kancheepuram District,
Kancheepuram. ... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 21.06.2018 in BCDFGISSSV No.44/2018 against the petitioner's wife Sarala, Female aged 44 years W/o.Arumugam, who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before this Court and set her at liberty.

For Petitioner : Mr.R.Sasikumar
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The order of the Court was made by C.T.SELVAM, J)

Petitioner is the husband of the detenue Sarala W/o.Arumugam, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.44/2018 dated 21.06.2018.

2. The detenue came to adverse notice in the following cases:

Sl.No.

Police Station and Crime No.

Offences u/s.

1.

Prohibition Enforcement Wing, Madurantakam, Crime No.519/2017

4(1)(a) Tamil Nadu Prohibition Act

2.

Prohibition Enforcement Wing, Madurantakam, Crime No.235/2018

4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Rectified Spirit Rules 2000

The alleged ground case has been registered against the detainee in Crime No.237 of 2018 on the file of Prohibition Enforcement Wing, Madurantakam, for offences under Sections 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 7 & 11 of Rectified Spirit Rules 2000. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondent. Perused the materials on record.

4. The detaining authority while noticing that the detainee has moved bail application in the ground case and the same is pending, he had informed that in a similar case bail has been granted by the Court of Principal District and Sessions Court, Chengalpattu and therefore, there was a real possibility of her coming out on bail and if she comes out on bail, she will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

□5(ii). ... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The □similarity case□ yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.□

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

C.T.SELVAM, J

and

M.NIRMAL KUMAR, J

gm

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detainee Sarala W/o.Arumugam in BCDFGISSSV No.44/2018 dated 21.06.2018 is quashed. The above named detainee is ordered to be set at liberty forthwith, unless her custody is required in connection with any other case.

[C.T.S., J] [M.N.K., J]

18.09.2018

Index: Yes/No

Internet: Yes

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To

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Secretariat, Chennai □ 600009.

2.District Collector
District Magistrate,
Kancheepuram District,
Kancheepuram.

3.The Public Prosecutor
High Court, Chennai.

4.The Superintendent of Police,
Special Prison for Women,
Puzhal, Chennai.

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