

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1015 of 2018

Vijaya

W/o.Kumar @ Tailor Kumar

... Petitioner

-VS-

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

2.The 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 09.05.2018 in BCDFGISSSV No.31/2018 against the petitioner's son Sathya, Male aged 31 years, S/o.Kumar @ Tailor Kumar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

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

Petitioner is the mother of the detenu Sathya S/o.Kumar @ Tailor Kumar, 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.31/2018 dated 09.05.2018.

2. The detenu came to adverse notice in Crime No.40 of 2018 on the file of Kanchi Taluk Police Station for offences u/s.147, 148, 120-B and 302 IPC. The alleged ground case has been registered against the detenu in Crime No.137 of 2018 on the file of Kanchi Taluk Police Station, for offences under Sections 294(b), 307, 397, 506 (ii) IPC r/w 3(i) of Tamil Nadu Property (Prevention of

Damage & Loss) Act, 1992. 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 respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded in both adverse and ground cases and the bail application filed in the adverse case stood dismissed and the bail application filed in the ground case was allowed but owing to non-execution of sureties, the bail granted was dismissed, he had informed that in similar cases bail has been granted and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he 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.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Sathya S/o.Kumar @ Tailor Kumar in BCDFGISSSV No.31/2018 dated 09.05.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
- 2.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Public Prosecutor
High Court, Chennai.
- 4.The Superintendent of Police,
Central Prison,
Vellore.
- 5.The Joint Secretary to Government Public(Law and Order),
Fort St.George,
Chennai 9

H.C.P.No.1015 of 2018

ASK(29/10/2018)



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