

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

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

H.C.P.No.1065 of 2018

Shanthi
W/o.Manigandan

... Petitioner/Wife of the Detenue

-vs-

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

2.The District Magistrate and District Collector,
The Nilgiris District,
Udhagamandalam - 643001.

... 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 relating to the petitioner's husband detention under Tamil Nadu act 14 of 1982 vide detention order dated 23.03.2018 on the file of second respondent herein made in proceedings Memo Cr.M.P.No.03/2018 [Goonda], quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Manigandan S/o.Duraisamy, aged 25 years, before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner :Mr.W.Camyles Gandhi
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 wife of the detenu Manigandan S/o.Duraisamy, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Cr.M.P.No.03/2018 dated 23.03.2018.

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

Sl.No	Police Station and Crime No.	Offences u/s.
1.	The Nilgiris, Ooty Rural Police Station, Crime No.51/2018	457 and 380 IPC
2.	The Nilgiris, Denaducombai Police Station, Crime No.69/2018	397 IPC

The alleged ground case has been registered against the detenu in Crime No.106 of 2018 on the file of Ooty Rural Police Station, for offence u/s.397 IPC. 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 under judicial custody in Crime No.106/2018 on the file of Ooty Rural Police Station and the bail application moved by the detenu in Cr.M.P.No.139/2018 on the file of learned Sessions Judge, Udhaagamandalam, was dismissed and the further bail application moved by him is pending, he had informed that in a similar case bail has been granted by learned Sessions Judge, Nilgiris, in C.M.P.No.467/2015 dated 24.07.2015 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 second respondent, detaining the detenu Manigandan S/o.Duraisamy in Cr.M.P.No.03/2018 dated 23.03.2018 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.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600009.
- 2.The District Magistrate and District Collector,
The Nilgiris District,
Udhagamandalam - 643001.
- 3.The Superintendent,
Central Prison,
Coimbatore.
4. The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.
- 5.The Public Prosecutor
High Court, Chennai.

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VGII (CO)
SP(02/11/2018)