

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2018

CORAM:

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

H.C.P. No.1070 of 2018

Thangam

... Petitioner

-Vs-

The State represented by its

1.The Secretary to Government (Home)  
Prohibition and Excise Department,  
Government of Tamil Nadu,  
Fort St George, Chennai 600 009.

2.The Commissioner of Police,  
Salem City, Salem.

... 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 C.M.P.NO.24/VIDEO PIRATE/SALEM CITY/2018 dated, 22.05.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Yuvaraj, S/O.Pappannan, who is presently detained in the Central Prison, Salem to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.Dr.S.Manoharan

For Respondents : Mr.M.Mohamed Riyaz  
Additional Public Prosecutor

ORDER

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

The petitioner, who is the mother of the detenu, namely, Yuvaraj, son of Pappannan, age 23 years, challenges the impugned order of detention, dated 22.05.2018 in C.M.P.No.24/Video Pirate/Salem City/2018 detaining her son as "Video Pirate", as contemplated under Section 2(j) 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 case:-

| S.No. | Cr.No. & Police Station                         | Offences                                                                                   |
|-------|-------------------------------------------------|--------------------------------------------------------------------------------------------|
| 1.    | Cr.No.113/2017<br>Video Piracy Cell, Salem Unit | 51 r/w 65 Copy Right Act, 1957                                                             |
| 2.    | Cr.No.198/2018<br>Video Piracy Cell, Salem Unit | 51(a) (i), 51(b) (i), 63(a), 52(A), 68-A r/w 65 of Copy Right Act, 1957 and 292(2) (a) IPC |

The ground case has been registered against the detenu in Crime No.198/2018 on the file of Video Piracy Cell, Salem Unit for offences u/s 51(a)(i), 63(a), 52(A), 68-A of Copy Right Act, 1957. The detention order has been passed by Second respondent in C.M.P.No.24/Video Pirate/Salem City/2018 on 22.05.2018.

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.198/2018 for the offences u/s.51(a)(i), 63(a), 52(A), 68-A of Copy Right Act, 1957. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the learned Judicial Magistrate No.2, Salem in C.M.P.No.153/2018. Therefore, the probability of release of the petitioner 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 C.M.P.No.24/Video Pirate/Salem City/2018 dated 22.05.2018, passed by the second respondent is set aside. The detenu, namely, Yuvaraj, son of Pappannan, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmi

To:

- 1.The Secretary to Government (Home)  
Prohibition and Excise Department,  
Government of Tamil Nadu,  
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,  
Salem City, Salem.
- 3.The Joint Secretary  
Public (Law and order) Department,  
Secretariat, Chennai - 600 009.
- 4.The Superintendent,  
Central Prison, Salem.
- 5.The Public Prosecutor  
High Court, Madras.

H.C.P.No.1070 of 2018

RSK(CO)  
GSP(31/10/2018)

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