

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM

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

H.C.P.No.1126 of 2018

Ayyammal
W/o.Rasu

... Petitioner

-vs-

1.State of Tamil Nadu,
represented by the
Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.

2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Ariyalur.

3.The Superintendent,
Central Prison,
Trichy.

... 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 detention order passed in Cr.M.P.No.17/2018 dated 15.05.2018 on the file of second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son Ilayaraja, aged 34 years, S/o.Rasu, who is detained at Central Prison, Trichy and set him at liberty.

For Petitioner : Mr.V.Illanchezian

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 Elaiyaraja S/o.Rasu, 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 Cr.M.P.No.17/2018 dated 15.05.2018.

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

Sl.No	Police Station and Crime No.	Offences u/s.
1.	Ariyalur Prohibition Enforcement Wing, Crime No.111/2015	4(1)(k) Tamil Nadu Prohibition Act, 1937
2.	Ariyalur Prohibition Enforcement Wing, Crime No.303/2015	4(1)(k) Tamil Nadu Prohibition Act, 1937
3.	Ariyalur Prohibition Enforcement Wing, Crime No.470/2015	4(1)(a) Tamil Nadu Prohibition Act, 1937
4.	Ariyalur Prohibition Enforcement Wing, Crime No.562/2016	4(1)(k) Tamil Nadu Prohibition Act, 1937
5.	Ariyalur Prohibition Enforcement Wing, Crime No.692/2015	4(1)(a) Tamil Nadu Prohibition Act, 1937
6.	Ariyalur Prohibition Enforcement Wing, Crime No.1284/2015	4(1)(a) Tamil Nadu Prohibition Act, 1937
7.	Ariyalur Prohibition Enforcement Wing, Crime No.11/2016	4(1)(k) Tamil Nadu Prohibition Act, 1937
8.	Ariyalur Prohibition Enforcement Wing, Crime No.118/2016	4(1)(k) Tamil Nadu Prohibition Act, 1937
9.	Ariyalur Prohibition Enforcement Wing, Crime No.258/2016	4(1)(a) Tamil Nadu Prohibition Act, 1937
10.	Ariyalur Prohibition Enforcement Wing, Crime No.994/2016	4(1)(a) Tamil Nadu Prohibition Act, 1937
11.	Ariyalur Prohibition Enforcement Wing, Crime No.06/2017	4(1)(a) Tamil Nadu Prohibition Act, 1937

Sl.No	Police Station and Crime No.	Offences u/s.
12.	Ariyalur Prohibition Enforcement Wing, Crime No.121/2017	4(1)(a) Tamil Nadu Prohibition Act, 1937
13.	Ariyalur Prohibition Enforcement Wing, Crime No.211/2017	4(1)(a) Tamil Nadu Prohibition Act, 1937
14.	Ariyalur Prohibition Enforcement Wing, Crime No.434/2017	4(1)(a) Tamil Nadu Prohibition Act, 1937
15.	Ariyalur Prohibition Enforcement Wing, Crime No.517/2017	4(1)(a) Tamil Nadu Prohibition Act, 1937
16.	Ariyalur Prohibition Enforcement Wing, Crime No.578/2017	4(1)(a) Tamil Nadu Prohibition Act, 1937
17.	Ariyalur Prohibition Enforcement Wing, Crime No.222/2018	4(1)(a) Tamil Nadu Prohibition Act, 1937
18.	Ariyalur Prohibition Enforcement Wing, Crime No.382/2018	4(1)(a) Tamil Nadu Prohibition Act, 1937

The alleged ground case has been registered against the detenu in Crime No.731 of 2018 on the file of Ariyalur Prohibition Enforcement Wing, for offences under Sections 4(1)(a), 4(1-A) TNP Act, 1937 r/w 328 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 remanded in the ground case and the bail application moved by the detenu in Cr.M.P.No.877/2018 on the file of learned Principal Sessions Judge, Ariyalur, is pending, he had informed that in a similar case bail has been granted by learned Principal Sessions Judge, Tiruchirappalli in Cr.M.P.No.146/2015 dated 27.01.2015 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 the second respondent, detaining the detenu Elaiyaraja S/o.Rasu in Cr.M.P.No.17/2018 dated 15.05.2018 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(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.
- 2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Ariyalur.
- 3.The Superintendent,
Central Prison,
Trichy.

4.The Public Prosecutor
High Court, Chennai.

5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.

H.C.P.No.1126 of 2018

KGK (CO)
CSL/12.11.2018



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