

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM:

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

H.C.P. No.1151 of 2018

Velumani

... Petitioner

-Vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.The Commissioner of Police,
Coimbatore City.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in C.No.51/G/IS/2018 dated 18.05.2018 and quash the same and direct the Respondents to produce the body and person of the petitioner's husband namely Dharmar, son of Palsamy Thevar, aged about 50 years detained in Central Prison, Coimbatore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Mohamed Ansar

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

ORDER

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

The petitioner, who is the wife of the detenu, namely, P.Dharmar, Son of Palsamy, age 50 years, challenges the impugned order of detention, dated 18.05.2018 in C.No.51/G/IS/2018 detaining her husband as "DRUG OFFENDER", as contemplated under Section 2(e) 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 ground case has been registered against the detenu in Crime No.275/2018 on the file of the Inspector of Police, Nellikuppam Police Station for offences u/s 8(c) r/w 20 (b) (ii) (C), 25, 27-A and 29 NDPS Act, 1985. The detention order has been passed by Second respondent in C.No.51/G/IS/2018 on 18.05.2018.

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 a ground case was registered against the detenu in Cr.No.275/2018 for the offences u/s.8(c) r/w 20 (b) (ii) (C), 25, 27-A and 29 NDPS Act, 1985. Admittedly, the detenu has moved bail application in the ground case and the same was dismissed by the learned Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act cases, Coimbatore in C.M.P.No.270/2018. Again he has filed bail application before this Court in CrI.O.P.No.13492/2018 and the same is pending. Therefore, the probability of release of the detenu 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.No.51/G/IS/2018 dated 18.05.2018, passed by the second respondent is set aside. The detenu, namely, P.Dharmar, Son of Palsamy, aged about 50 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2. The Commissioner of Police,
Coimbatore City.

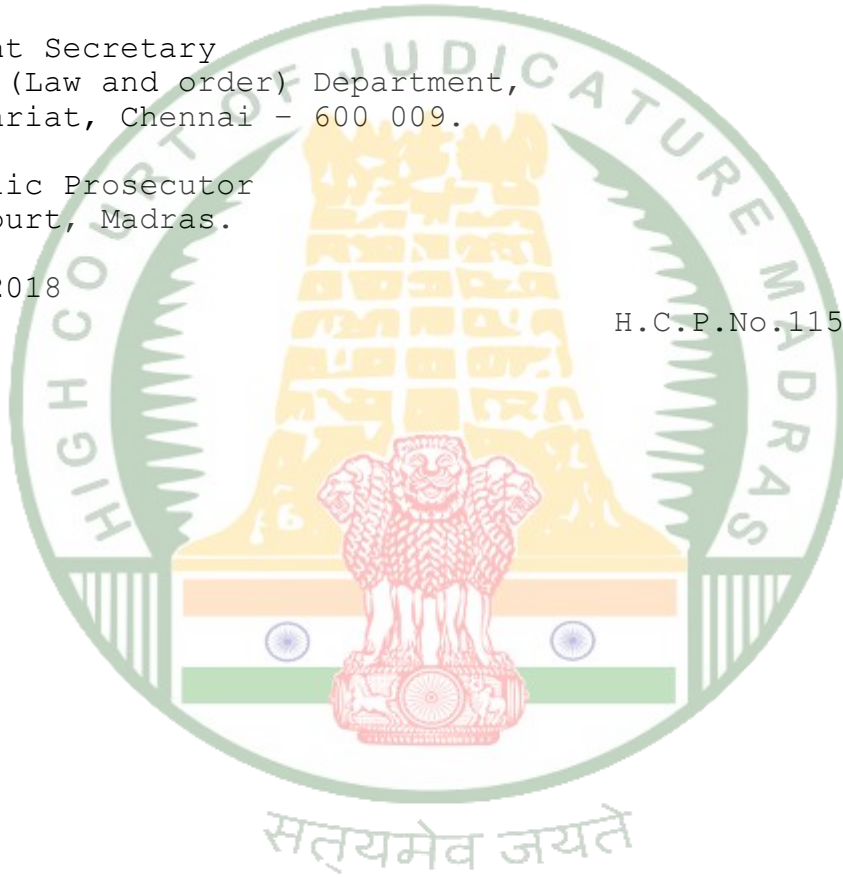
3. The Superintendent,
Central Prison, Coimbatore.

4. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5. The Public Prosecutor
High Court, Madras.

sm:20.11.2018

H.C.P.No.1151 of 2018



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