

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM:

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

H.C.P. No.1181 of 2018

A.Sumathi

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Villupuram District,
Villupuram.

... 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 NO.C2/13874/2018 dated, 05-06-2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Archunan, S/O. Arumugam, who is presently detained in the Central Prison, Cuddalore to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.S.Saravanakumar

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Archunan, Son of Arumugam, aged 38 years, challenges the impugned order of detention, dated 05.06.2018 in No.C2/13874/2018 detaining her husband as "BOOTLEGGERS", as contemplated under Section 2(b) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, 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 Cr.No.207/2018 on the file of Prohibition Enforcement Wing, Tindivanam, for offences u/s 4(1)(aaa), 4(1-A), 4(1)(i) Tamil Nadu Prohibition Act, 1937. The detention order has been passed by first respondent in No.C2/13874/2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that a ground case came to be registered against the detenu in Cr.No.207/2018 for the offences u/s. 4(1)(aaa), 4(1-A), 4(1)(i) Tamil Nadu Prohibition Act, 1937. Admittedly, the bail application filed by the detenu in the ground case before the Sessions Court, Villupuram, in CMP.2944/2018 and the same was dismissed on 30.05.2018. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the ground case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. 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. Hence, on this ground, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the 2nd respondent is set aside.

The detenu is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

kmi

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Villupuram District,
Villupuram.
3. The Superintendent,
Central Prison,
Cuddalore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1181 of 2018

RSK (CO)

GMV (09/11/2018)

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