

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM:

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

H.C.P. No.1191 of 2018

Selvi

... Petitioner

-Vs-

1.State of Tamil Nadu
Rep. by The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai-600 007.

... 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.195/BCDFGISSSV/2018 dated, 04.04.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Karthik, S/O. Dhayalan, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.D.Gopi Krishnan

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, Karthik, Son of Dhayalan, age 25 years, challenges the impugned order of detention, dated 04.04.2018 in No.195/BCDFGISSSV/2018 detaining her son as "GOONDA", as contemplated under Section 2 (f) 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 cases:-

S.No.	Police Station & Crime No.	Sections of Law
1.	K6 T.P.Chatram Police Station Cr.No.1534/2014	341, 294(b), 324 & 506(i) IPC @ 341, 294(b), 323, 324 & 506(i) IPC
2.	K-8 Arumbakkam Police Station Cr.No.950/2015	294(b), 341, 147, 148, 307 IPC
3.	K4-Anna Nagar Police Station Cr.No.1032/2017	147, 148, 341, 264 (b), 307, 392 r/w 120(B), 114, 149 IPC & 3(1) of TNPPDL Act
4.	K6 T.P.Chatram Police Station Cr.No.104/2018	341, 294(b), 323, 394 r/w 397, 307, 506(i) IPC & 3(1) TNPPDL Act

The ground case has been registered against the detenu in Crime No.105/2018 on the file of the Inspector of Police, K6 T.P.Chatram Police Station for offences u/s 341, 294(b), 323, 392 r/w 397, 506(ii) IPC & 3(1) of Tamil Nadu Property Prevention of Damage & Loss Act, 1992. The detention order has been passed by Second respondent in No.195/BCDFGISSSV/2018 on 04.04.2018.

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.105/2018 for the offences u/s.341, 294(b), 323, 392 r/w 397, 506(ii) IPC & 3(1) of Tamil Nadu Property Prevention of Damage & Loss Act, 1992. Admittedly, the detenu has moved bail application in the ground case and the same was dismissed on 19.03.2018 by the learned Principal Sessions Judge, Vellore in CrI.M.P.No.4756/2018. Again he has filed bail application before this Court in CrI.O.P.No.10395/2018 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 No.195/BCDFGISSSV/2018 dated 04.04.2018, passed by the second respondent is set aside. The detenu, namely, Karthik, Son of Dhayalan, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai-600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai-66.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

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GMV(19/11/2018)