

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.1197 of 2018

Abirami
W/o.Premnath

..Petitioner/wife of the detenue

-vs-

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

2.The District Collector and
District Magistrate,
Villupuram District.

... 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 in No.C2/15308/2018 dated 30.05.2018 passed by second respondent under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Premnath S/o.Rajendran, aged about 35 years, the detenu, now confined at Central Prison, Cuddalore, before this Court and set the petitioner's husband Premnath S/o.Rajendran, aged about 35 years, at liberty.

For Petitioner : Mr.G.Mohammed Aseef
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 wife of the detenu Premnath S/o.Rajendran, who has been branded as a 'Bootlegger' under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in No.C2/15308/2018 dated 30.05.2018.

2. The detenu came to adverse notice in Crime No.645/2017 on the file of Kottakuppam Prohibition Enforcement Wing for offences u/s.4(1)(aaa) and 4(1-A) Tamil Nadu Prohibition Act, 1937. The alleged ground case has been registered against the detenu in Crime No.213 of 2018 on the file of Mailam Police Station, for offences under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) Tamil Nadu Prohibition Act, 1937. 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 C.M.P.No.3111/2018 on the file of learned Sessions Judge, Villupuram Sessions Division, Villupuram, is pending, he had informed that in a similar case bail has been granted by learned Sessions Judge, Villupuram Sessions Division, Villupuram, in C.M.P.No.2304/2016 dated 29.04.2016 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 Premnath S/o.Rajendran in No.C2/15308/2018 dated 30.05.2018 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(CS)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to Government Home, Prohibition and
Excise Department,
Fort St.George, Chennai - 600009.
- 2.The District Collector and District Magistrate,
Villupuram District.
- 3.The Superintendent,
Central Prison,
Cuddalore.
4. The Secretary to Government Public (Law & Order)
Fort St.George, Chennai-9.
- 5.The Public Prosecutor
High Court, Chennai.

H.C.P.No.1197 of 2018

RJI (CO)
EU(19/11/2018)