

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2018
CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1231 of 2018

Sargunavathy
W/o.Arumugam ... Petitioner

-vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai □ 600 009.

2.The District Collector and District Magistrate,
Cuddalore District,
Cuddalore. ... 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 in connection with the order of detention passed by second respondent dated 30.05.2018 in C3/D.O/29/2018 against the petitioner's husband Arumugam, M/A 41, S/o.Thambiraj, who is confined at Central Prison, Vellore and to set aside the same and consequently, direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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 Arumugam S/o.Thambiraj, who has been branded as a □Goonda□ under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C3/D.O/29/2018 dated 30.05.2018.

2. The detenu came to adverse notice in Crime No.36/2018 on the file of Cuddalore Port Police Station for offences u/s.147, 148, 294(b), 323, 324, 307 and 302 IPC. The alleged ground case has been registered against the detenu in Crime No.37 of 2018 on the file of Cuddalore Port Police Station, for offence u/s.392 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 to judicial custody upto 31.05.2018 and lodged at Central Prison, Vellore, in the ground case and has not filed any bail application, he had informed that in a similar case bail has been granted by learned District Sessions Judge, Cuddalore, in Crl.M.P.No.957 of 2016 dated 09.03.2016 and therefore, there was a real possibility of his coming out on bail by filing bail application in the ground case 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 second respondent, detaining the detenu Arumugam S/o.Thambiraj in C3/D.O/29/2018 dated 30.05.2018 is quashed. The above

C.T.SELVAM, J
and
M.NIRMAL KUMAR, J

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named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

[C.T.S., J] [M.N.K., J]

05.10.2018

Index: Yes/No

Internet: Yes

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To

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Secretariat, Chennai □ 600 009.

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

3.The Superintendent,
Central Prison,
Vellore.

4.The Public Prosecutor
High Court, Chennai.

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