

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1247/2018

R.Sathya

..Petitioner

-vs-

1.The District Collector & District Magistrate
Cuddalore District, Cudalore.

2.The Secretary to Government
Home, Prohibition & Excise Department
St George Fort, Chennai-9.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the 1st respondent herein concerned C3/D.O/31/2018 dated 01.06.2018 and set aside the order of detention passed therein against the detenu by name C.Ramesh son of Chinnakannu, Hindu aged about 36 years, who is presently detained in the Central Prison, Cuddalore to be produced before this Hon'ble Court and setting him at liberty.

For Petitioner : Mr.S.Suresh

For Respondents : Mr.M.Mohamed Riyaz, APP

ORDER

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

Petitioner, wife of the detenu herein, challenges the impugned order of detention, dated 01.06.2018 in C3/D.O/31/2018 detaining her husband as a "Boot legger", 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 As per the grounds of detention dated 01.06.2018 passed by the first respondent, the detenu came to adverse notice in the following cases:

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Cuddalore PEW Cr.No.793/2017	4[1][aaa] & 4[1-A] read with 14A TNP Act
2	K.Pudupatti PS Cr.No.165/2017	457, 380 IPC
3	Cuddalore PEW Cr.No.913/2017	4[1][aaa] & 4[1-A] read with 14A TNP Act
4	Cuddalore PEW Cr.No.266/2018	4[1][aaa] & 4[1-A] read with 14A TNP Act & 465, 468, 471 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Panruti PEW Cr.No.337/2018	4[1][aaa] , 4[1-A] and 14A TNP Act

2 We have heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3 The learned counsel for the petitioner would submit that the Detaining Authority has not satisfied himself as to the real possibility of the detenu coming out on bail in the ground case as the detenu has never moved any bail application in the said case subsequent to the dismissal of the earlier bail application. Hence, on the above sole ground, the detention order is liable to be set aside.

4 Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with, at the instance of the petitioner.

5 On a perusal of the impugned order of detention, in particular, the Grounds, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail in the ground case. Admittedly, at the time of passing the Detention Order, no bail application was filed in the ground case in Cr.No.337/2018 subsequent to the dismissal of the earlier bail application, viz., in CrI.MP.No.258/2018 on 30.05.2018 by the learned Vacation Sessions Judge, Mahila Court, Cuddalore. 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. When no bail application is filed, the logical conclusion would be that there is no

likelihood of the detenu 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. Therefore, on this sole ground alone, 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 first respondent is set aside. The detenu, is directed to be released forthwith unless his detention is required in connection with any other case.

AP

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

To

- 1.The District Collector & District Magistrate
Cuddalore District, Cudalore.
- 2.The Secretary to Government
Home, Prohibition & Excise Department
St George Fort, Chennai-9.
- 3.The Superintendent of Prisons
Central Prison, Cuddalore.
- 4.The Public Prosecutor, High Court, Madras.
5. The Joint Secretary to Govt. Public (Law & Order)
Department, Fort St. George, Chennai 600 009.

KR/20/11/18

H.C.P.No.1247/2018

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