

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.1257/2018

Kanimozhi

... Petitioner

-vs-

1.State of Tamil Nadu
rep.by its Secretary to Government
Prohibition & Excise Department [Home]
Chennai-600 009.

2.The District Collector & District Magistrate
Cuddalore, Cuddalore District. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in C3/D.O/34/2018 dated 14.06.2018 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce petitioner's husband Thiru Dhayanithi, son of Chandrasekaran, aged about 34 years, who now detained in Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhi Kumar

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 14.06.2018 in Memo No.C3/D.O/34/2018 detaining her husband as a "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 As per the grounds of detention dated 14.06.2018 passed by the second 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	Naduveerapattu PS Cr.No.188/2018	341, 294[b], 353, 506[i] IPC r/w 3[1] TNPPDL Act, 1992

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Naduveerapattu PS Cr.No.190/2018	147, 148, 447, 294[b], 323, 324, 353, 506[ii]. 307, 394, 397 IPC & 3[1] of TNPPDL Act, 1992

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. 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 applications were filed in the ground case [Cr.No.190/2018]. 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 second 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)

//True Copy//

Sub Assistant Registrar

AP

To

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

सत्यमेव जयते

H.C.P.No.1257/2018

SPD(CO)
EU(27/11/2018)

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