

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.1280/2018

K.Amulrani

... Petitioner

-vs-

- 1.State of Tamil Nadu
rep.by its Secretary to Govt.,
Home, Prohibition & Excise Department
Fort St. George, Chennai-600 009.
- 2.The District Collector & District Magistrate
Tiruvannamalai District,
Tiruvannamalai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner's husband Sathish, son of Duraikannu, male, aged about 37 years is presently lodged in Central Prison at Vellore and has been detained under Act 14/82 as a "Sand Offender" vide detention order dated 10.06.2018 on the file of the 2nd respondent herein, made in D.O.No.21/2018-C2 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter, set him at liberty from the Central Prison at Vellore.

For Petitioner : Mr.M.Rajavelu

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 10.06.2018 in D.O.No.21/2018-C2 detaining her husband as a "Sand Offender", 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 10.06.2018 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	Polur PS Cr.No.898/2017	21[5] TN MM Act, 1957

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Polur PS Cr.No.355/2018	294[b], 353, 379, 430, 307 IPC read with TNMM Act, 1957

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 including the counter affidavit filed by the respondent.

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 and the pendency of the 2nd 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, the 2nd bail application filed in the ground case in Cr.No.355/2018 on 07.06.2018 in CrI.MP.No.1999/2018, pursuant to the dismissal of the earlier bail application, viz., in CrI.MP.No.1648/2018 on 04.06.2018 by the learned Vacation Judge, District Court, Tiruvannamalai, was pending. Hence, there is no material to substantiate that there is real or imminent 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 VI)

//True Copy//

Sub Assistant Registrar

AP

To

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

H.C.P.No.1280/2018

rrs 23/11/2018