

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.1300/2018

Deborah

... Petitioner

-vs-

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

2.The Commissioner of Police
Greater Chennai, Vepery
Chennai 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 11.06.2018 on the file of the 2nd respondent herein made in proceedings No.387/BCDFGISSSV/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's husband namely Sunil Kumar @ Sunil, son of Selvam, aged 29 years, before this Court and set the petitioner's husband at liberty from detention now petitioner's husband detained at Central Prison, Puzhal, Chennai 600 006.

For Petitioner : Mr.C.C.Chellappan

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 11.06.2018 in No.387/BCDFGISSV/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 11.06.2018 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	K1 Sembium PS Cr.No.651/2018	147, 148, 341, 294[b], 323, 324, 307 & 506[ii] IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	K1 Sembium PS Cr.No.653/2018	147, 148, 341, 294[b], 336, 397 & 506[ii] IPC

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 applications. 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 as well as in the adverse case. Admittedly, at the time of passing the Detention Order, no bail applications were filed in the ground case [Cr.No.653/2018] and in the adverse case [Cr.No.651/2018]. 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 VI)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery
Chennai 600 007.
- 3.The Superintendent of Prisons
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary,
Public (Law and Order) Department,
Fort. St. George, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1300/2018

GN(06/12/2018)