

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P. No.1305 of 2018

A.Geetha

... Petitioner

-Vs-

1. The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector and
District Magistrate, Tiruvannamalai District,
Tiruvannamalai.
2. State Rep by
The Inspector of Police,
Kalambur Police Station,
Tiruvannamalai 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 D.O.No.22/2018-C2 dated 19.06.2018 on the file of the second respondent and to produce the petitioner's husband/detenu Arumugam, S/o.Annamalai Gounder before this Court now detained at Central Prison, Vellore and to set him liberty forthwith.

For Petitioner : Mr.S.L.Venkatesan
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

The petitioner, who is the wife of the detenu, namely, Arumugam, son of Annamalai Gounder, age 50 years, challenges the impugned order of detention, dated 19.06.2018 in D.O.No.22/2018-C2 detaining her husband as "BOOTLEGGERS", as contemplated under Section 2(b) 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. The detenu has come to adverse notice in the following case:-

S.No.	Cr.No. & Police Station	Offences
1.	Cr.No.304/2017 Kalambur Police Station	4(1)(aaa) r/w 4(1-A)(ii) TNP Act 1937 @ 4(1)(aaa) TNP Act, 1937
2.	Prohibition Enforcement Wing, Polur Crime No.360/2018	4(1)(aaa) r/w 4(1-A)(ii) TNP Act 1937 @ 4(1)(aa) TNP Act, 1937

The ground case has been registered against the detenu in Crime No.380/2018 on the file of Kalambur Police Station for offences u/s 4(1)(i)r/w4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. The detention order has been passed by Second respondent in D.O.No.22/2018-C2 on 19.06.2018.

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

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

5. The Grounds of Detention would reveal that a ground case was registered against him in Crime No.380/2018 for the offences u/s 4(1)(i)r/w4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. Admittedly, the detenu has moved a bail application before the District Sessions Court, Tiruvannamalai in Cr.M.P.No.1992 of 2018 and the same was dismissed on 08.06.2018. Thereafter, another bail application has been filed before this Court in Cr.O.P.No.15473 of 2018 dated 13.06.2018 and the same is pending. Therefore, the probability of release of the petitioner imminently does not arise. Hence, we are inclined to set aside the detention order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. 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.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.22/2018-C2 dated 19.06.2018, passed by the second respondent is set aside. The detenu, namely, Arumugam, son of Annamalai Gounder, aged about 50 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To:

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector and
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
3. The Inspector of Police,
Kalambur Police Station, Tiruvannamalai District

H.C.P. No.1305 of 2018

GSP(20/11/2018)

सत्यमेव जयते
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