

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM:

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

H.C.P. No.1326 of 2018

Thulasi

... Petitioner

-Vs-

1.State of Tamil Nadu,
Rep. By the Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.District Collector & District Magistrate,
Vellore District, Vellore-9.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention C3/D.O.NO.46/2018 dated, 03/07/2018 passed by the 2nd respondent and to quash the same and also to direct the detinue Govindammal, age 32 years W/O.Thulasi, who is presently detained in the Central Prison, Vellore, District to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.G.Nirmalkrishnan

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

The petitioner, who is the husband of the detinue, namely, Tmt.Govindammal, Wife of Thulasi, age 32 years, challenges the impugned order of detention, dated 03.07.2018 in C3/D.O.No.46/2018 detaining his wife 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 detainee has come to adverse notice in the following cases:-

Sl.No	Police Station & Crime No.	Section of Law
1.	Tirupathur Taluk Police Station Crime No.220/2016	4(1)i, 4(1)aaa, 4(1-A) ii TNP Act 1937 r/w 328 IPC
2.	Tirupathur Taluk Police Station Crime No.446/2017	4(1)aa, 4(1-A) ii TNP Act 1937
3.	Tirupathur Taluk Police Station Crime No.500/2017	4(1)aa, 4(1-A) ii TNP Act 1937

The ground case has been registered against the detainee in Crime No.233/2018 on the file of Uthiramerur Police Station for offences u/s 4(1)i, 4(1)aaa, 4(1-A)ii TNP Act, 1937 r/w 328 IPC. The detention order has been passed by Second respondent in C3/D.O.No.46/2018 on 03.07.2018.

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 3 adverse cases have been registered against the detainee and a ground case was registered against her in Cr.No.233/2018 for the offences u/s.4(1)i, 4(1)aaa, 4(1-A)ii TNP Act, 1937 r/w 328 IPC. Admittedly, the detainee has moved bail application in the ground case and the same is pending before the Principal Sessions Judge, Vellore in CrI.M.P.No.2593/2018. 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 detainee 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 C3/D.O.No.46/2018 dated 03.07.2018, passed by the second respondent is set aside. The detenue, namely, Tmt.Govindammal, Wife of Thulasi, aged about 32 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kmi

To:

1. The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.District Collector & District Magistrate,
Vellore District, Vellore-9.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Special Prison for Women, Vellore.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1326 of 2018

CSL/20.11.2018

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