

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.1346 of 2018

V.Mala

... Petitioner

-Vs-

1.State Rep. by
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

... 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 B.C.D.F.G.I.S.S.S.V. NO. 47/2018 dated, 29.06.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Vimalraj, S/o.Pushparaj, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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

सत्यमेव जयते
ORDER

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

The petitioner, who is the wife of the detenu, namely, Vimalraj, Son of Pushparaj, age 27 years, challenges the impugned order of detention, dated 29.06.2018 in B.C.D.F.G.I.S.S.S.V. No.47/2018 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.	Police Station & Crime No.	Section of Law
1.	Orathy Police Station, Crime No.63/2018	4(1) (aa) 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Rectified Spirit Rules 2000
2.	Orathy Police Station Crime No.64/2018	4(1) (aaa) 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Rectified Spirit Rules 2000

The ground case has been registered against the detenu in Crime No.253/2018 on the file of Prohibition Enforcement Wing, Madurantakam for offences u/s 4(1) (aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 7 & 11 of Rectified Spirit Rules 2000. The detention order has been passed by Second respondent in B.C.D.F.G.I.S.S.S.V. No.47/2018 on 29.06.2018.

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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.253/2018 for the offences u/s.4(1) (aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 7 & 11 of Rectified Spirit Rules 2000. Admittedly, the detenu has moved bail application in the ground case and the same was dismissed on 28.06.2018 by the learned Principal District and Sessions Judge, Chengalpattu, in CrI.M.P.No.2317/2018. Therefore, the probability of release of the detenu 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 B.C.D.F.G.I.S.S.S.V. No.47/2018 dated 29.06.2018, passed by the second respondent is set aside. The detenu, namely, Vimalraj, Son of Pushparaj, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS V)

//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.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent of Police,
Central Prison, Puzhal,
Chennai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1346 of 2018

RSK (CO)

rrs 27/11/2018

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