

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM:

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

H.C.P. No.1354 of 2018

Usha

... Petitioner/Wife of
the Detenu

-Vs-

1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The 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 in connection with the order of detention passed by the second respondent dated 05.07.2018 in C3/D.O. No.47/2018 against the petitioner husband Gopi, male aged 41 years S/o. Pachaiyappan, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at Liberty.

For Petitioner : Mr.D. Balaji

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, Gopi, Son of Pachaiyappan, aged 41 years, challenges the impugned order of detention, dated 05.07.2018 in No.C3/D.O.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	Cr.No. & Police Station	Offences
1.	Vaniyambadi Prohibition Enforcement Wing Cr. No.428 of 2017	u/s 4(1) aaa TNP Act 1937 r/w Sec. 6, 7 of T.N.R.S. Rules 2000
2.	Vaniyambadi Prohibition Enforcement Wing Cr. No.492 of 2017	u/s 4(1) aaa, 4(1-A) ii TNP Act 1937 r/w Sec. 7 of T.N.R.S. Rules 2000 and 420, 468, IPC.

2. The ground case has been registered against the detenu in Crime No.257/2018 on the file of Vaniyambadi Prohibition Enforcement wing Police Station for offences u/s 4(1)aaa, 4(1-A) ii TNP Act, 1937 r/w 328 IPC. The detention order has been passed by Second respondent in No. C3/D.O. No.47/2018, dated 05.07.2018.

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 a ground case was registered against her in Cr.No.257/2018 for the offences u/s. 4(1)aaa, 4(1-A)ii TNP Act, 1937 r/w 328 IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the learned Principal Sessions Judge, Vellore, in CrI.M.P.No.2712/2018. 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 No.C3/D.O.No.47/2018, dated 05.07.2018, passed by the second respondent is set aside. The detenu, namely, Gopi, Son of Pachaiyappan, aged about 41 years, is directed to be released forthwith unless her detention is required in connection with any other case.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To:

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

H.C.P.No.1354 of 2018

VGII(CO)
SP(04/12/2018)