

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.1358 of 2018

S. Vijayalakshmi ..Petitioner/wife of the detenu

-Vs-

1. State of Tamil Nadu
Rep. by the Secretary, Home,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.District Collector & District Magistrate,
Office of the District Collector
and District Magistrate,
Kancheepuram District. 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 detention order in BCDFGISSSV No.46/2018, dated 29.06.2018 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to Produce the petitioner's husband SASIKUMAR @ SASI S/o.SEKAR aged about 33 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and see the petitioner's husband husband SASIKUMAR @ SASI S/o.SEKAR aged about 33 years the detenu herein at liberty.

For Petitioner : Mr.D.Gopikrishnan

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Sasikumar @ Sasi, Son of Sekar, aged 33 years, challenges the impugned order of detention, dated 29.06.2018 in B.C.D.F.G.I.S.S.S.V, No.46 of 2018 detaining her husband as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, 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.	Maraimalai Nagar Police Station Crime No.821/2015	120 (b), 147, 148, 342, 449, 302, 506 (ii) IPC r/w 149 IPC
2.	Maraimalai Nagar Police Station Crime No.824/2015	341, 294 (B), 395, 397, 307, 506(ii) IPC
3.	Maraimalai Nagar Police Station Crime No.595/2016	341, 294 (b), 307, 392, 397, 506(ii) IPC

The ground case has been registered against the detenu in Cr.No.323/2018 on the file of Maraimalai Police Station, for offences u/s 341, 294(b), 307, 506(ii) IPC. The detention order has been passed by second respondent in C3/D.O.No.41/2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that a ground case came to be registered against the detenu in Cr.No.323/2018 for the offences u/s.341, 294(b), 307, 506 (ii) IPC. Admittedly, the bail application filed by the detenu in the ground case before the learned Principal District Sessions Judge, Chengalpattu, in CrI.MP.No.2361/2018 and the same was dismissed on 21.06.2018. 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 detenue coming out on bail and the said order was passed

6. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the 2nd 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

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary, Home,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. District Collector & District Magistrate,
Office of the District Collector
and District Magistrate,
Kancheepuram District.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

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NMI (CO)
EU(04/12/2018)

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