

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.1398 of 2018

Pechiammal ... Petitioner

Versus

1. The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Detaining Authority,
Tiruppur City. ... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of 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 29.06.2018 in Memo C.No.10/G/IS/2018 against the son of the petitioner Detenu Santhana Bharathi @ Santhanam M/S 40, S/o.Prammanayagam @ Perumal who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

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

ORDER

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

The petitioner, who is the mother of the detenu, namely, Santhana Bharathi @ Santhanam, son of Prammanayagam @ Perumal, aged 40 years, challenges the impugned order of detention, dated

29.06.2018 in C.No.10/G/IS/2018, detaining her husband as "Goonda", as contemplated under Section 2(f) 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.	Ooty Town Central Police Station Crime No.825 of 2017	170, 417 and 420 IPC
2.	Nilgiris District Pudumund Police Station Crime No.284 of 2017	170, 417 and 420 IPC
3.	Nilgiris District Central Police Station Crime No.837 of 2017	Under Section 292 (2) (a), 352 506(i) IPC r/w 65 Copy Rights Act, 1957
4	Trichy Metro Contonment Police Station Crime No.1259 of 2017	420 IPC
5	Salem Metro Suramangalam Police Station Crime No.709 of 2017	419, 420 IPC
6	Salem Metro, Salem Metro (Criminal) Police Station Crime No.80 of 2017	420, 419 IPC

The ground case has been registered against the detenu in Crime No.432/2018 on the file of Tirpur Metro (South) Police Station for offences u/s170, 419, 420, 397, 506 (ii) IPC . The detention order has been passed by Second respondent in C.No.10/G/IS/2018, dated 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 6 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No. 432/2018 for the offences u/s170, 419, 420, 397, 506 (ii) of IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the learned District Principal and Sessions Judge, Tiruppur in C.M.P.No.1089/2018. 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 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 C.No.10/G/IS/2018, dated 29.06.2018, passed by the second respondent is set aside. The detenu, namely, Santhana Bharathi, son of Prammanayagam @ Perumal, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//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 Commissioner of Police,
Detaining Authority,
Tiruppur City.
3. The Superintendent,
Central Prison, Coimbatore.

4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1398 of 2018

SJ(CO)
CSL/27.12.2018



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