

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

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

H.C.P.No.1450 of 2018

Vijaya
W/o.Sakthivel

... Petitioner

-vs-

1.The Additional Chief Secretary to
Government,
Prohibition and Excise Department
Government of Tamil Nadu,
Secretariat, Chennai - 9.

2.The District Collector and
District Magistrate,
Krishnagiri,
Krishnagiri District.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records in connection with the detention order dated 30.04.2018 in S.C.No.35/2018 of 2nd respondent and direct the respondents to produce the detenu, namely Anandh before this Hon'ble Court and set him at liberty and quash the same.

For Petitioner : Mr.K.Thiruvengadam

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

ORDER

(Order of the Court was made by **C.T.SELVAM, J**)

Petitioner is the mother of the detenu Anandh S/o.Sakthivel, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in S.C.No.35/2018 dated 30.04.2018.

2. The detenu came to adverse notice in the following cases:

Sl.No.	Police Station and Crime No.	Offences u/s.
1.	Kandhikuppam Police Station, Crime No.122/2018	451, 342 and 394 IPC
2.	Bargur Police Station, Crime No.124/2018	392 IPC

The alleged ground case has been registered against the detenu in Crime No.130/2018 on the file of Bargur Police Station for offence u/s.392 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded in the ground case as well as in the adverse cases as a remand prisoner till 27.04.2018 and his remand has been extended upto 11.05.2018 and the bail application moved by the detenu in the ground case is pending, he had

informed that in a similar case bail has been granted by learned District Principal Sessions Judge, Dharmapuri, in CrI.M.P.No.1503 of 2015 dated 07.08.2015 and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

‘5(ii). The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The “similarity case” yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.’

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

C.T.SELVAM, J
and
M.NIRMAL KUMAR, J

gm

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Anandh S/o.Sakthivel in S.C.No.35/2018 dated 30.04.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

[C.T.S., J] [M.N.K., J]
24.10.2018

Index: Yes/No
Internet: Yes
gm
To

1.The Additional Chief Secretary to Government,
Prohibition and Excise Department
Government of Tamil Nadu
Secretariat, Chennai - 9.

2.The District Collector and District Magistrate,
Krishnagiri,
Krishnagiri District.

3.The Superintendent of Central Prison,
Salem.

4.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1450 of 2018