

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.1493 of 2018

Akmal Alima
W/o.Firhouse

... Petitioner

-vs-

1.State of Tamil Nadu
Rep. By The Secretary, Home,
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police
The Greater Chennai City
Vepery, Chennai - 600 007.

... 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 relating to the detention order in Memo No.510/BCDFGISSSV/2018, dated 11.07.2018 passed by 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 Firhouse, S/o.Mohammed Hussain aged about 31 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Honourable Court and set the petitioner's husband Firhouse, S/o.Mohammed Hussain aged about 31 years the detenu herein at liberty.

For Petitioner : Mr.D.Gopi Krishnan
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

Petitioner is the wife of the detenu Firthouse S/o.Mohammed Hussain, who has been branded as a 'Video Pirate' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.510/2018 dated 11.07.2018.

2. The alleged ground case has been registered against the detenu in CCB Crime No.286 of 2018 on the file of Central Crime Branch, for offences u/s.52(A), 68(A), 51 r/w 63(a) & 65 of Copy Right Act, 1957 and 292 (2)(a) 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 and the bail application moved by the detenu in CrI.M.P.No.2943/2018 on the file of learned Chief Metropolitan Magistrate,

Egmore, Allikulam, is pending, he had informed that in a similar case bail has been granted by such Court in X Crime No.253/2015 dated 10.07.2015 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.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Firthouse

C.T.SELVAM, J

and
M.NIRMAL KUMAR, J

gm

S/o.Mohammed Hussain in BCDFGISSSV No.510/2018 dated 11.07.2018 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
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To

1.The Secretary,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George
Chennai - 600009.

2.The Commissioner of Police
The Greater Chennai City
Vepery, Chennai - 600 007.

3.The Superintendent of Police
Central Prison
Puzhal, Chennai.

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

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