

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.10.2018

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

H.C.P. No.1495 of 2018

Kairun Nisha
W/o.Abdul Kader

... Petitioner

-Vs-

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

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

... 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 Memo No.508/BCDFGISSSV/2018 dated 11.07.2018 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 Abdul Kader, S/o.Mohammed Hussain aged 33 years the detenu herein, who is presently detained in the Central Prison, Puzhal, Chennai before this Hon`ble court and set at liberty.

For Petitioner : Mr.J.C.Durairaj for
D.Gopi Krishnan

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, Abdul Kader, son of Mohammed Hussain, age 33 years, challenges the impugned order of detention, dated 11.07.2018 in BCDFGISSSV No.508/2018 detaining his son as "VIDEO PIRATE", as contemplated under Section 2(j) 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 ground case has been registered against the detenu in Crime No.286/2018 on the file of Uthiramerur Police Station for offences u/s 52(A), 68(A), 51 r/w 63(a) & 65 of Copy Right Act, 1957 and 292(2) (a) IPC. The detention order has been passed by Second respondent in BCDFGISSSV No.508/2018 on 11.07.2018.

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 him in Cr.No.286/2018 for the offences u/s.52(A), 68(A), 51 r/w 63(a) & 65 of Copy Right Act, 1957 and 292(2) (a) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Chief Metropolitan Magistrate Court, Egmore at Allikulam, Chennai in CrI.M.P.No.2943/2018. 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 BCDFGISSSV No.508/2018 dated 11.07.2018, passed by the second respondent is set aside. The detenu, namely, Abdul Kader, son of Mohammed Hussain, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmi

To:

1.The Secretary,
Home Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

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

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

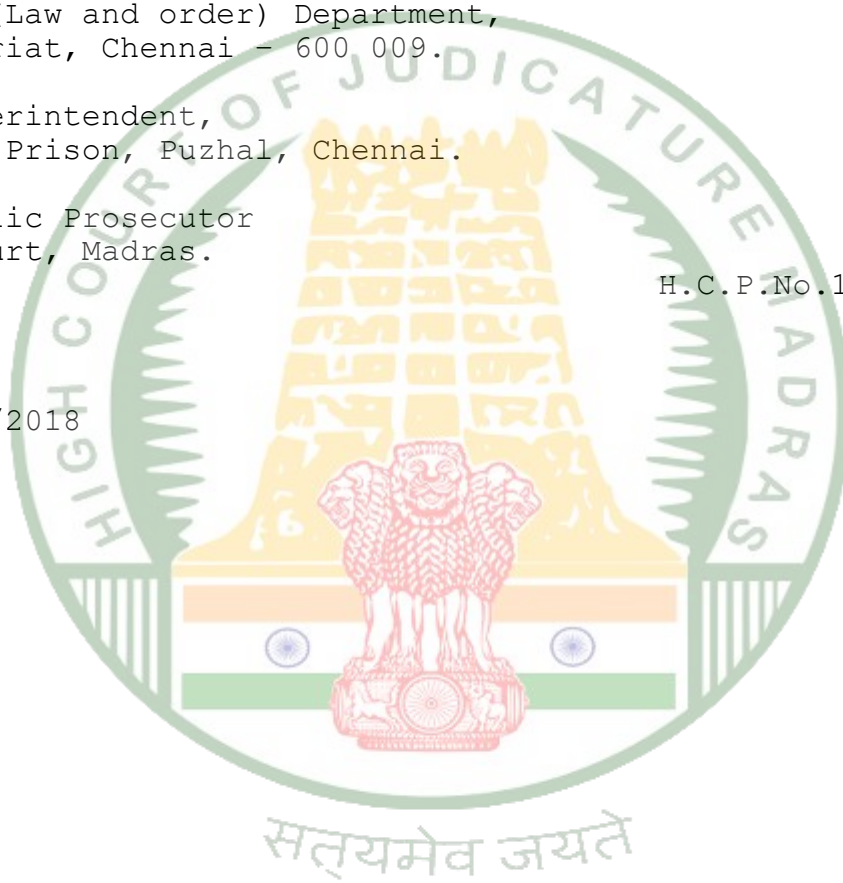
4.The Superintendent,
Central Prison, Puzhal, Chennai.

5.The Public Prosecutor
High Court, Madras.

H.C.P.No.1495 of 2018

RK(CO)

rrs 16/11/2018



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