

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2018
CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1519 of 2018

D.Murali
S/o.V.Durai ... Petitioner

-vs-

1.State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

2.The District Magistrate and District Collector,
Salem 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 entire records relating to petitioner's brother Velu @ Velusettiyar, aged about 41 years, under Tamil Nadu Act 14 of 1982 vide detention order dated 16.07.2018 on the file of second respondent herein made in proceedings C.M.P.No.25/B.L.A./C2/2018, detained in Central Prison, Salem, quash the same as illegal and consequently direct the respondents herein to produce him before this Court and set him at liberty from detention.

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

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

Petitioner is the brother of the detenu Velu @ Velusettiyar S/o.Vasudevan, who has been branded as a "Bootlegger" under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C.M.P.No.25/B.L.A./C2/2018 dated 16.07.2018.

2. The alleged ground case has been registered against the detenu in Crime No.629 of 2018 on the file of Attur Prohibition Enforcement Wing, for offence u/s.4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act r/w 6, 7 of TNRS Rules, 2000. 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 is in remand in Crime No.629/2018 on the file of Attur Prohibition Enforcement Wing and the bail applications moved by the detenu in Crl.M.P.Nos.2168 and 2256 of 2018 on the file of learned Principal Sessions Judge, Salem, were dismissed and the bail application moved before this Court in Crl.O.P.No.17740/2018 is pending, he had informed that in a similar case bail has been granted by learned Principal Sessions Judge, Villupuram, in Crl.M.P.No.8003/2015 dated 05.01.2016 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 second respondent, detaining the detenu Velu @ Velusettiayar

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

gm

S/o.Vasudevan in C.M.P.No.25/B.L.A./C2/2018 dated 16.07.2018 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]

05.10.2018

Index: Yes/No

Internet: Yes

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To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

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

3.The Superintendent,
Central Prison,
Salem.

4.The Public Prosecutor
High Court, Chennai.

H.C.P.No.1519 of 2018