

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:22.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2267 of 2017

Selvi

... Petitioner

-vs-

1.The Secretary to Government,
Home Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.District Collector &
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

... 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 order of detention D.O.NO.44/2017-C2 dated, 10/11/2017 passed by the 2nd respondent and to quash the same and also to direct the detenu Thiru.Elumalai, S/O.Annamalai, who is presently detained in the Central Prison, Vellore to be produced before this Court and set at liberty.

For Petitioner: Mr.D.Balaji

For Respondents: Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court by N.SATHISH KUMAR, J.]

The petitioner, who is the wife of the detenu, namely, Elumalai, son of Annamalai, age 33 years, challenges the impugned order of detention, dated 10.11.2017 in D.O.No.44/2017-C2 detaining her husband as "Bootlegger", as contemplated under Section 2(b) 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. 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.

3. 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.

4. A perusal of the Grounds of Detention would reveal that 3 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.434/2017 for the offences u/s.4(1)(i) r/w 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937. Though bail application was pending in a similar case and the same have been taken into consideration by the Detaining Authority. Similar case particulars have not been given in the Detention Order. It is further to be noted that in similar case, bail has been granted. Bails are normally granted based on the facts and circumstances of each case. The similarity theory cannot be taken as a yardstick while passing the Detention Order. Though the alleged samples of illicit arrack were seized on 15.10.2017, the same were sent to the Court only on 23.10.2017. The delay in despatching the samples remains unexplained. Besides the detention order has been passed with an inordinate delay of more than one month, which has been passed on 10.11.2017. It also remains unexplained. All these facts clearly indicate the non-application of mind by the Detaining Authority. Hence, we are inclined to set aside the detention order.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.44/2017-C2 dated 10.11.2017, passed by the second respondent is set aside. The detenu, namely, Elumalai, son of Annamalai, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmi

To:

1.The Secretary to Government,
Home Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The District Collector &
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

3.The Superintendent, Central Prison, Vellore,

4.The Joint Secretary to Government
Public (L&O)
Fort St.George, Chennai-9

5.The Public Prosecutor
High Court, Madras.

VGII (CO)
sm:21.2.2018

H.C.P.No.2267 of 2017



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