

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.1620 of 2018

Elumalai

... Petitioner

-Vs-

1.The District Collector District Magistrate,
Thiruvannamalai District.

2.Government of Tamil Nadu,
Rep.by its Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

3.The Inspector of Police,
Polur Police Station,
Thiruvannamalai District
Crime No. 363/2018

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in D.No.36/2018 - C2 dated 30.07.2018 on the file of the 1st respondent and quash the same and direct the Respondents herein to produce the petitioner's wife Bharathi, F/A 46 years, W/o. Elumalai who is now confined in Special Prison for Women, Vellore, before this Court and set her at liberty.

For Petitioner : Mr. D.Balaji
For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court made by C.T.SELVAM, J.]

Petitioner, who is the Husband of the detainee, viz., Bharathi W/o. Elumalai, aged 46 years, challenges the impugned order of detention, dated 30.07.2018 in D.O.No.36/2018-C2 detaining her wife as "Bootlegger", as contemplated under Section 2(b) of the Tamil Nadu Act 14 of 1982.

2. The detainee has come to adverse notice in the following cases:-

S.Nos	Police Station & Crime No.	Section of Law
1.	Tiruvannamalai Prohibition Enforcement Wing Cr.No. 376/2015	4(1) (i) r/w 4(1-A) (ii) TNP Act 1937 @ 4 (1) (i) 4(1) (aaa) r/w 4(1-A) (ii) TNP Act 1937
2.	Tiruvannamalai Prohibition Enforcement Wing Cr.No. 381/2016	4(1) (aaa) r/w 4(1-A) (ii) TNP Act 1937 @ 4 (1) (aaa) TNP Act 1937
3.	Kilpennathur Police Station Cr.No. 943/2017	4(1) (aa) r/w 4(1-A) (ii) TNP Act 1937 @ 4 (1) (aa) TNP Act 1937

The ground case has been registered against the detainee in Cr.No.730/2018 on the file of Tiruvannamalai Prohibition Enforcement Wing for offences u/s 4(1) (i) r/w. 4(1-A) (ii) of Tamil Nadu Prohibition Act, 1937. The detention order has been passed by first respondent in D.No.36/2018-C2.

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. A perusal of the Grounds of Detention would reveal that 3 adverse cases have been registered against the detainee and a ground case came to be registered against her in Cr.No.730/2018 for offences u/s 4(1) (i) r/w. 4(1-A) (ii) of Tamil Nadu Prohibition Act, 1937. Admittedly, the bail application filed by the detainee in the ground case before the learned District Sessions Judge, Tiruvannamalai, in CrI.M.P.No.2680/2018 and the same was dismissed on 30.07.2018. Therefore, the probability of release of the detainee 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 detainee 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 passed by the first respondent is set aside. The detenu is directed to be released forthwith unless her detention is required in connection with any other case.

jas/jrl

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To:

- 1.The District Collector District Magistrate,
Thiruvannamalai District.
2. The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 3.The Inspector of Police,
Polur Police Station,
Thiruvannamalai District.
4. The Superintendent,
Special Prison for Women, Vellore.
5. The Joint Secretary to Government Public (L&O)
Fort St. George, Chennai-9.
- 6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1620 of 2018

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KAN(CO)
EU(07/12/2018)