

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM:

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

H.C.P. No.1656 of 2018

Anbarasi

... Petitioner

-Vs-

1.State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire records, relating to my husband's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 07.07.2018 on the file of the second respondent herein made in proceedings No.487/BCDFGISSSV/2018, quash the same as illegal and consequently direct the respondents herein to produce my husband namely Prathan Kumar @ Kicha, S/o. Senthil @ Thadi Senthil, aged 25 years before this Hon'ble High Court and set my husband at liberty.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

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ORDER

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

Petitioner, who is the wife of the detenu, viz., Prathan Kumar @ Kicha, Son of Senthil @ Thadi Senthil, aged 25 years, challenges the impugned order of detention, dated 07.07.2018 in No.487/BCDFGISSSV/2018 detaining her husband as "GOONDA", as

contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, 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 Cr.No.554/2018 on the file of the Inspector of Police, Law and Order, N2 Kasimedu Police Station for offences u/s 147, 148, 302 r/w 120(B) IPC. The detention order has been passed by second respondent in No.487/BCDFGISSSV/2018 on 07.07.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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 a ground case came to be registered against him in Cr.No.554/2018 for the offences u/s. 147, 148, 302 r/w 120(B) IPC. Admittedly, the bail application filed by the detenu in the ground case before the Court of Principal Sessions, Chennai, in CrI.M.P.No.10374/2018 and the same was dismissed. Therefore, the probability of release of the detenu 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 No.487/BCDFGISSSV/2018, dated 07.07.2018, passed by the second respondent is set aside. The detenu, namely Prathan Kumar @ Kicha, Son of Senthil @

Thadisenthil, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai
- 4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

CSL/14.12.2018

सत्यमेव जयते

H.C.P.No.1656 of 2018

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