

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2018

CORAM:
THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.1713 of 2018

Palani

... Petitioner

-Vs-

1.The Government of Tamil Nadu, rep by its
Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police/Detaining Authority
Office of Commissioner of Police,
Coimbatore City, Coimbatore.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order vide C.No.66/G/IS/2018 dated 18.06.2018 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner son P.Rajeshkumar, aged about 33 years, the detenu now confined in Central Prison, Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Vijayakumar

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

ORDER

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

The petitioner, who is the father of the detenu, namely, P.Rajeshkumar, Son of Palani, age 33 years, challenges the impugned order of detention, dated 18.06.2018 in C.No.66/G/IS/2018 detaining his son as "DRUG OFFENDER", as contemplated under Section 2(e) 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.438/2018 on the file of the Inspector of Police, D-1 Ramanathapuram Police Station for offences u/s 8(c) r/w 20(b) (ii)(c) NDPS Act. The detention order has been passed by second respondent in C.No.66/G/IS/2018 on 18.06.2018.

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.438/2018 for the offences u/s 8(c) r/w 20 (b) (ii)(C) NDPS Act. Admittedly, the detenu has not moved any bail application in the ground case. 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 C.No.66/G/IS/2018 dated 18.06.2018, passed by the second respondent is set aside. The detenu, namely, P.Rajeshkumar, Son of Palani, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police/Detaining Authority
Office of Commissioner of Police,
Coimbatore City, Coimbatore.

3.The Superintendent,
Central Prison,
Coimbatore.

(With 2 copies for for communication to the detenue)

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

5.The Public Prosecutor
High Court, Madras.

H.C.P.No.1713 of 2018

SPD(CO)

rrs 12/12/2018



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