

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

H.C.P. No.1786 of 2018

E.Selvi

... Petitioner

-Vs-

1.The State of Tamil Nadu
Rep. By the Secretary to the Government,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the son of the petitioner, Shankar, aged 25 years before this Hon'ble Court, now confined in the Central Prison, Puzhal, Chennai and set him at liberty and to call for the records pertaining to the Memo No.374/BCDFGISSSV/2018 dated 06.06.2018 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji

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 mother of the detenu, namely, Shankar, Son of Elumalai, age 25 years, challenges the impugned order of detention, dated 06.06.2018 in No.374/BCDFGISSSV/2018 detaining her son as "GOONDA", as contemplated under Section 2(f) 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 detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	T-4 Maduravoyal Police Station Crime No.577/2017	147, 148, 341 & 307 IPC
2.	T-4 Maduravoyal Police Station Crime No.551/2018	392 IPC
3.	T-4 Maduravoyal Police Station Crime No.552/2018	392 IPC

The ground case has been registered against the detenu in Crime No.553/2018 on the file of the Inspector of Police, T-4 Maduravoyal Police Station for offences u/s 341, 294(b), 336, 427, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.374/BCDFGISSSV/2018 on 06.06.2018.

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 3 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.553/2018 for the offences 341, 294(b), 336, 427, 397, and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in 3rd and 4th adverse case Crime Nos.551/2018 and 552/2018 respectively. 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.374/BCDFGISSSV/2018 dated 06.06.2018, passed by the second respondent is set aside. The detenu, namely, Shankar, Son of Elumalai, aged about 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

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To:

- 1.The Secretary to the Government,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
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.

+1cc to Mr.U.Kathiravan, Advocate SR.No.84590

H.C.P.No.1786 of 2018

GMV (03/01/2019)