

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1795 of 2018

Sithi Nehla .. Petitioner/Daughter of the
Detenue

Vs.

1.The Government of Tamil Nadu,
rep. by its Secretary,
Home and Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
Vepery

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the proceedings of the second respondent in No.485/BCDFGISSSV/2018 dated 06.07.2018 against the petitioner's father Umar Hasan, S/o.Ahmed Yasan, aged about 47 years and quash the same and consequently direct the respondents to produce the detenue who is detained under the Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr. R.Saranath

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

O R D E R

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

The petitioner, who is the daughter of the detenu, namely, Umar Hassan, son of Ahmed Yasan, age 47 years, challenges the impugned order of detention, dated 06.07.2018 in D.O.No.485/BCDFGISSSV/2018 detaining her mother 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.	Cr.No. & Police Station	Offences
1.	Cr.No.268/2018 Central Crime Branch	12(1)(b), 12(2) of Passport Act, 1967 r/w 420, 468 and 471 I.P.C

The ground case has been registered against the detenu in Crime No.269/2018 on the file of the Central Crime Branch for offences u/s 12(1)(b), 12(2) of Passport Act, 1967 r/w 420, 468 and 471 I.P.C. The detention order has been passed by Second respondent in D.O.No.485/BCDFGISSSV/2018 on 06.07.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in Crime No.269/2018 for the offences u/s 12(1)(b), 12(2) of Passport Act, 1967 r/w 420, 468 and 471 I.P.C. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Special Metropolitan Magistrate Court for CCB and CBCID (Metro) Cases, Chennai in C.M.P.No.3088/2018. Therefore, the probability of release of the petitioner 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 D.O.No.485/BCDFGISSSV/2018 dated 06.07.2018, passed by the second respondent is set aside. The detenu, namely, Umar Hassan, son of Ahmed Yasan, aged about 47 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

kmi/srn

To:

1. The Secretary,
Government of Tamil Nadu,
Home and Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery
3. The Superintendent
Central Prison, Puzhal.
4. The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.
5. The Public Prosecutor
High Court, Madras 104.

H.C.P. No.1795 of 2018

SVI (CO)
SP(26/11/2018)

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