

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM:

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

H.C.P. No.1819 of 2018

Kalyani ...Petitioner/Mother of the Detenue

-Vs-

1. State of Tamil Nadu,
Rep. by the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2. The Commissioner of Police,
The 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, calling for the records relating to the detention order in Memo No.617/BCDFGISSSV/2018, dated 31.07.2018 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Appu @ Jinda @ Udayanidhi Son of Manoharan aged about 23 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Appu @ Jinda @ Udayanidhi Son of Manoharan aged about 23 years the detenue herein at liberty.

For Petitioner : Mr.U.Yuvaraj

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

ORDER

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

Petitioner, who is the mother of the detenu, viz., Appu @ Jinda @ Udayanidhi, Son of Manoharan, aged 23 years, challenges

the impugned order of detention, dated 31.07.2018 in No.617/BCDFGISSSV/2018 detaining her son 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.173/2018 on the file of Inspector of Police, E2 Royapettah Police Station for offences u/s 147, 148, 294(b), 353, 333, 397, 307, 506(ii) IPC r/w 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act 1992. The detention order has been passed by second respondent in No.617/BCDFGISSSV/2018, dated 31.07.2018.

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 that a ground case came to be registered against him in Cr.No.173/2018 for the offences u/s.147, 148, 294(b), 353, 333, 397, 307, 506(ii) IPC r/w 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act 1992. Admittedly, the bail application filed by the detenu in the ground case before the learned Principal Sessions Judge, Chennai, in CrI.M.P.No.11240/2018 and the same was dismissed on 20.07.2018. 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 detenue 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.617/BCDFGISSSV/2018, dated 31.07.2018, passed by the second respondent is set aside. The

detenu, namely Appu @ Jinda @ Udayanidhi Son of Manoharan, aged 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary, Home, Prohibition and Excise Department, Fort St.George, Chennai-600 009.
2. The Commissioner of Police, The 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.

GJ(CO)
KAK(10/01/2019)

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