

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.1835 of 2018

ElumalaiPetitioner/Brother of Detenu

-Vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The District Collector &
District Magistrate,
Vellore District,
Vellore-9.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of Detention passed by the Second respondent dated 12.08.2018 in C3/D.O.No.54/2018 against the petitioner brother Suresh, Male aged 27 years son of Mayilarasan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER

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

The petitioner is the brother of the detenu, namely, Suresh, Son of Mayilarasan, age 27 years, challenges the impugned order of detention, dated 12.08.2018 in C3/D.O.No.54/2018 detaining his brother as "SAND OFFENDER", as contemplated under Section 2 (gg) 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.	Arakkonam Taluk Police Station Crime No.565/2015	U/s.379, 430 IPC
2.	Arakkonam Taluk Police Station Crime No.62/2017	U/s.379, 430 IPC

The ground case has been registered against the detenu in Crime No.280/2018 on the file of the Inspector of Police, Arakkonam Taluk Police Station for offences u/s 147, 294(b), 332, 307, 397 IPC. The detention order has been passed by second respondent in C3/D.O.No.54/2018 on 12.08.2018.

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 two adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.280/2018 for the offences u/s.147, 294(b), 332, 307, 397 IPC @ 147, 294(b), 332, 307, 379 IPC r/w Section 21(1), Mines and Minerals (Development and Regulation) Act 1957. Admittedly, the detenu has moved bail application in the ground case is pending before the Principal Sessions Court, Vellore in CrI.M.P.No.3552/2018. 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 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 C3/D.O.No.54/2018 dated 12.08.2018, passed by the second respondent is set aside. The detenu, namely, Suresh, Son of Mayilarasan, aged about 27 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 the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector &
District Magistrate,
Vellore District, Vellore-9.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary to Government,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1835 of 2018

BR(CO)
CSL/08.01.2019

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