

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM:

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

H.C.P. No.1853 of 2018

N.Gajalakshmi

... Petitioner

-Vs-

1.The State of Tamil nadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The District Collector and District Magistrate,
Tiruvannamalai, Tiruvannamalai District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing to produce the body of the detenu by name Neelakandan, son of Radhakrishnan, aged 36 years, presently confined at Central Prison, Vellore, before this Hon'ble Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 30.07.2018 in D.O.No.35/2018-C2 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.N.Manokaran

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

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ORDER

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

Petitioner, who is the wife of the detenu, viz., Neelakandan, Son of Radhakrishnan, aged 36 years, challenges the impugned order of detention, dated 30.07.2018 in D.O.No.35/2018-C2 detaining her husband as "Sexual Offender", as contemplated

under Section 2(ggg) 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.933/2018 on the file of the Inspector of Police, Tiruvannamalai Town Police Station for offences u/s 376 r/w 511 IPC @ 376D, 354A, 376 r/w 511 IPC. The detention order has been passed by second respondent in D.O.No.35/2018-C2 on 30.07.2018.

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.933/2018 for the offences u/s. 376 r/w 511 IPC @ 376D, 354A, 376 r/w 511 IPC. Admittedly, the bail application filed by the detenu in the ground case before the Hon'ble District Sessions Court, Tiruvannamalai, in CrI.M.P.No.2829/2018 and the same was dismissed on 27.07.2018. 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 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.35/2018-C2, dated 30.07.2018, passed by the second respondent is set aside. The detenu, namely, Neelakandan, Son of Radhakrishnan, aged 36 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

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Tiruvannamalai, Tiruvannamalai District.
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1853 of 2018

srg 25/01/2019