

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM:

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

H.C.P. No.1913 of 2018

A.Jasmin Banu

.... Petitioner/Wife of the detenue

-Vs-

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

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissionerate,
Vepery High Road, 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 leading to the detention of the petitioner's husband namely, Syed Asaraf Ali @ Asaraf Ali S/o. Mohammed Kasim vide detention order dated 06.08.2018 on the file of the 2nd respondent herein made in the proceedings in No.659/BCDFGISSSV/2018 quash the same and consequently direct the respondents herein to produce the body and person of the said Syed Asaraf Ali @ Asaraf Ali S/o. Mohammed Kasim, before this Hon'ble Court and thereafter set him at liberty from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.L.Ramesh

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Syed Asaraf Ali @ Asaraf Ali, Son of Mohammed Kasim, aged 50 years,

challenges the impugned order of detention, dated 06.08.2018 in No.659/BCDFGISSSV/2018 detaining her husband 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 detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Central Crime Branch Crime No.228/2018	420, 506(i) r/w 34 IPC

The ground case has been registered against the detenu in Cr.No.191/2018 on the file of Inspector of Police, Team II, EDF-I, Central Crime Branch, Greater Chennai for offences u/s 392 IPC. The detention order has been passed by second respondent in NO.659/BCDFGISSSV/2018 on 06.08.2018.

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 1 adverse cases has been registered against the detenu and a ground case came to be registered against him in Cr.No.191/2018 for the offences u/s. 420, 506(i) and 342 r/w 120(B) IPC. Admittedly, the bail application filed by the detenu in the ground case before the Judicial Magistrate Court, Alandur in Dis.No.2666/2018 and the same was dismissed on 03.08.2018. 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 detainee 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.659/BCDFGISSSV/2018 dated 06.08.2018, passed by the second respondent is set aside. The detenu, namely, Syed Asaraf Ali @ Asaraf Ali, Son of Mohammed Kasim, aged about 50 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 State of Tamil Nadu
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissionerate,
Vepery High Road, 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.

H.C.P.No.1913 of 2018

nri(CO)
srg(11/12/2018)