

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM:

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

H.C.P. No.1983 of 2018

E.Kalaivani

... Petitioner

-Vs-

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

2. The Commissioner of Police,
Greater Chennai,
Commissioner's Office,
E.V.K.Sampath Road,
Vepery, Chennai.

3.The Inspector of Police,
E-2,Royapettach Police Station,
Royapettah, Chennai.

.... 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 order of detention NO.616/BCDFGISSSV/2018 dated, 31.07.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Sundar, S/O. Eswar, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.G.Vijayanand

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., Sundar, Son of Eswar, aged 22 years, challenges the impugned order of

detention, dated 31.07.2018 in No.616/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 G-5 Secretariat Colony 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.616/BCDFGISSSV/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 the ground case has been registered against the detenu 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.12039/2018 and the same was dismissed on 25.07.2018. 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 dated 31.07.2018 in No.616/BCDFGISSSV/2018 passed by the 2nd respondent is set aside. The detenu viz., Sundar, Son of Eswar, aged 22 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

kmi

To:

1. The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Commissioner's Office,
E.V.K.Sampath Road,
Vepery, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Inspector of Police,
E-2, Royapettach Police Station,
Royapettah, Chennai.
6. The Public Prosecutor,
High Court, Madras.

+3cc to Mr.G.Vijay Anand Associates, Advocate, S.R.No.

H.C.P.No.1983 of 2018

GSP(02/01/2019)

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