

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P. No.1992 of 2018

Santhiyagu @ Keerivayan @ Nataraj

... Petitioner

-Vs-

1.The State of Tamil Nadu
Rep. By the Secretary to the Government,
Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in Cr.M.P.No.10/Drug Offender/2018/C1 branding him as a 'Drug Offender' passed by the 2nd respondent dated on 29.06.2018 and set aside the same and directing the respondents to produce the detenu viz., Santhiyagu @ Keerivayan @ Nataraj, S/o. Arokkiyasamy, aged about 52 years, who is now detained in Central Prison, Coimbatore before this Hon'ble Court, and set the detenu at liberty forthwith.

For Petitioner : Mr.R.Ganesh

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

ORDER

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

The petitioner, who is the detenu, namely, Santhiyagu alias Keerivayan alias Nataraj, Son of (Late) Arokkiyasamy, aged 52 years, challenges the impugned order of detention, dated 29.06.2018 in Cr.M.P.No.10/Drug Offender/2018/C1 detaining him as "DRUG OFFENDER", as contemplated under Section 2(e) 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.	Gobichettipalayam Police Station Crime No.176/2018	Section 20(b) (ii) (A) of Narcotic Drugs and Psychotropic Substances Act 1985

The ground case has been registered against the detenu in Crime No.314/2018 on the file of the Gobichettipalayam Police Station for offences u/s. 20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act. The detention order has been passed by second respondent in Cr.M.P.No.10/Drug Offender/2018/C1 on 29.06.2018.

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 1 adverse cases has been registered against the detenu and a ground case was registered against him in Cr.No.314/2018 for the offences u/s. 20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act. Admittedly, the detenu has not moved any bail application in the ground case. 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 Cr.M.P.No.10/Drug Offender/2018/C1 dated 29.06.2018, passed by the second respondent is set aside. The detenu, namely, Santhiyagu alias Keerivayan alias Nataraj, Son of (Late) Arokkiyasamy, aged about 52 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

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To:

- 1.The Secretary to the Government,
Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Erode District, Erode.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Ganesh, Advocate Sr.88286

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srg 25/01/2019