

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2018

CORAM:
THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.2013 of 2018

S.Pushpa

... Petitioner

-Vs-

1. State of Tamil Nadu rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
 2. The District Collector & District Magistrate,
Vellore District, Vellore.
 3. The Superintendent of Prison,
Central Prison, Vellore.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the petitioner's son viz., Jeeva, Son of Subramani, aged about 23 years before this Hon'ble Court now confined in Central Prison, Vellore, and set him at liberty and to call for the records pertaining to the order of detention passed in C3/D.O.No.63/2018 dated 01.09.2018 by the 2nd respondent and set aside the same.

For Petitioner : Mr.S.Sairaman

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 mother of the detenu, namely, Jeeva, Son of Subaramani, aged 23 years, challenges the impugned order of detention, dated 01.09.2018 in C3/D.O.No.63/2018 detaining her son 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.	Arcot Taluk Police Station Crime No.203/2018	U/s. 430, 379 IPC

The ground case has been registered against the detenu in Crime No.389/2018 on the file of the Arcot Taluk Police Station for offences u/s. 379, 430, 353, 307 IPC r/w Section 21(5), Mines and Minerals (Development and Regulation) Act 1957. The detention order has been passed by second respondent in C3/D.O.No.63/2018 on 01.09.2018.

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 case has been registered against the detenu and a ground case was registered against him in Cr.No.389/2018 for the offences u/s. 379, 430, 353, 307 IPC r/w Section 21(5), Mines and Minerals (Development and Regulation) Act 1957. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Court of Principal Sessions Judge, Vellore in CrI.M.P.No.4072/2018. 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.63/2018 dated 01.09.2018, passed by the second respondent is set aside. The detenu,

namely, Jeeva, Son of Subramani, aged about 23 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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
- 2.The District Collector & District Magistrate,
Vellore District, Vellore.
- 3.The Superintendent of Prison,
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.2013 of 2018

rrs 29/01/2019

सत्यमेव जयते
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