

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM:

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

H.C.P. No.2045 of 2018

Megala

... Petitioner

-Vs-

- 1.The State of Tamil Nadu
Represented by Secretary to Government,
Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section), 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 relating to the order of detention BCDEGISVV.NO.718/2018 dated, 14/08/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Sakthivel @ Vadakarai Sakthi, M/A 49 years, S/O.Sundarraaj, who is presently detained in the Central Prison, Puzhal, to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.P.Chandra Sekar

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 wife of the detenu, namely, Sakthivel @ Vadakarai Sakthi, Son of Sundarraaj, age 49 years, challenges the impugned order of detention, dated 14.08.2018 in

No.718/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.	Thiruvallur District, E-5 Sholavaram Police station, Crime No.323/2018	397 IPC

The ground case has been registered against the detenu in Crime No.403/2018 on the file of the Inspector of Police, M4 Red Hills Police Station for offences u/s Man Missing @ 364(A) IPC. The detention order has been passed by second respondent in No.718/BCDFGISSSV/2018 on 14.08.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.403/2018 for the offences u/s.Man Missing @ 364(A) IPC. Admittedly, the detenu has moved bail application in the adverse case as also in the ground case and the same were dismissed by the Principal District and Sessions Court, Thiruvallur in CrI.M.P.Nos.3629/2018 & 3342/2018 respectively. Again, he has moved another bail application for E5 Sholavaram Police Station in Crime No.323/2018 and M4 Red Hills Police Station in Crime No.403/2018 before this Court in CrI.O.P.Nos.20066/2018 & 20065/2018 respectively and the same were pending. 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 No.718/BCDFGISSSV/2018 dated 14.08.2018, passed by the second respondent is set aside. The detenu, namely, Sakthivel @ Vadakarai Sakthi, Son of Sundarraaj, aged about 49 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 Government,
Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section), 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.2045 of 2018

GMY (31/12/2018)