

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.799 of 2018

Sobhiaflarans
W/o.John Xavier

...Petitioner

-Vs-

1.The State of Tamil Nadu,
represented by its Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.

2.The Commissioner of Police,
Greater of Chennai,
Vepery, Chennai - 600007.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in Memo No.203/BCDFGISSSV/2018 dated 07.04.2018 on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Jonh Xavier @ Habibulla Khader, S/o.James, aged 38 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.T.Sundaravadanan

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R
[Order of the Court was made by C.T.SELVAM, J]

Petitioner is the wife of the detenu John Xavier @ Habibulla Khader S/o.James, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in No.203/BCDFGISSSV/2018 dated 07.04.2018.

2. The detenu came to adverse notice in the following cases:-

Sl. No.	Police Station and Crime No.	Sections of Law
1.	Chennai Q Branch, CID Crime No.1/2017	120(B0) IPC, 12(1A)(a), 12(2) of Passport Act, 1967
2.	G1 Vepery Police Station, Crime No.196/2018	465, 467, 468, 471, 473, 474, 420 IPC and 12(2) of Passport Act, 1967

The alleged ground case has been registered against the detenu in Crime No.197 of 2018 on the file of G1 Vepery Police Station for offences under sections 341, 294(b), 323, 336, 392, 397 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Amidst several grounds raised, learned counsel for petitioner submits that the detaining authority while noticing that the detenu has not filed any bail application in the ground case, he had informed that the relatives of the detenu were taking efforts to move bail application to take him out on bail and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. Though the detaining authority has informed of an effort by the relatives to move bail petition for the release of the detenu, there is no material to support such contention.

4. We have heard learned Additional Public Prosecutor on the above submissions and also perused the records.

5. We find that there absolutely is no material which would disclose the likelihood of the relatives of the detenu moving bail petition on his behalf in respect of the ground case. Therefore, the non-application of mind and erroneous subjective satisfaction arrived at by the detaining authority is apparent.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, John Xavier @ Habibulla Khader S/o.James, made in No.203/BCDFGISSSV/2018 dated 07.04.2018, is quashed and the Habeas Corpus Petition is

allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.
- 2.The Commissioner of Police,
Greater of Chennai,
Vepery, Chennai - 600007.
- 3.The Superintendent of Central Prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public (Law and order),
Fort St.George, Chennai -9.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Sundaravadanam, Advocate, S.R.No.58650.

H.C.P.No.799 of 2018

RGN (CO)

rrs 19/09/2018

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