

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM:

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

H.C.P. No.2054 of 2018

Kalimuthu

... Petitioner

-Vs-

1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 09.

2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 01.09.2018 in Cr.M.P.No.17/BL/2018/E1 against the petitioner's son Mr.K.Vinayagamoorthy, S/o. P.Kalimuthu, aged about 34 years, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.W.Camyles Gandhi

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

ORDER

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

Petitioner, who is the father of the detenu, viz., Vinayagamoorthy, Son of Kalimuthu, aged 34 years, challenges the impugned order of detention, dated 01.09.2018 in Cr.M.P.No.17/BL/2018/E1 detaining his son as "BOOTLEGGERS", as contemplated under Section 2(b) 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Tiruppur District, Tiruppur Prohibition Enforcement Wing Crime No.335/2017	4(1) (a) of Tamil Nadu Prohibition Act
2.	Tiruppur District, Tiruppur Prohibition Enforcement Wing Crime No.518/2017	4(1) (aa) of Tamil Nadu Prohibition Act
3.	Coimbatore District, Periyanaickenpalayam Prohibition Enforcement Wing Crime No.549/2018	4(1) (a) of Tamil Nadu Prohibition Act

The ground case has been registered against the detenu in Cr.No.727/2018 on the file of the Periyanaickenpalayam Prohibition Enforcement Wing, for offences u/s. 4(1) (aa) r/w 4 (1-A) of Tamil Nadu Prohibition Act and Section 420, 468, 471 of IPC . The detention order has been passed by second respondent in Cr.M.P.No:17/BL/2018/E1 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 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 3 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.727/2018 for the offences u/s. 4(1) (aa) r/w 4(1-A) of Tamil Nadu Prohibition Act and Section 420, 468, 471 of IPC. Admittedly, the bail application filed by the detenu in the ground case before the Judicial Magistrate No.2, Coimbatore, in Crl.M.P.No.4331/2018 and the same was dismissed on 11.08.2018. Further, on 14.08.2018, again he has filed a bail petition in the same case before the Court of Principal District and Sessions Judge, Coimbatore and the same was dismissed on 20.08.2018, in Crl.M.P.No.2407/2018. 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 Cr.M.P.No.17/BL/2018/E1, dated 01.09.2018, passed by the second respondent is set aside. The detenu, namely, Vinayagamoorthy, Son of Kalimuthu, aged 34 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,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
3. The Superintendent, सतयमेव जयते
Central Prison, Coimbatore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2054 of 2018

GMY (31/12/2018)