

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2084 of 2018

Lalitha
W/o.Late Krishnan ... Petitioner

vs.

- 1.The Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George
Chennai- 600 009
- 2.The District Magistrate & District Collector,
Tiruvallur District,
Tiruvallur. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 04.09.2018 on the file of the second respondent herein made in proceedings Memo B.C.D.F.G.I.S.S.S.V.No.25/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Magesh, S/o.Krishnan (Late) aged 30 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son is detained at Central Prison, Puzhal-II, Chennai.

For Petitioner : Mr.R.Sasikumar

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 mother of the detenu Magesh S/o.Krishnan, who has been branded as a 'Sand Offender' under the Tamil Nadu Act 14 of 1982 and detained under

order of the second respondent passed in BCDFGISSSV No.25/2018 dated 04.09.2018.

2. The detenu came to adverse notice in Crime No.118 of 2018 on the file of Tiruvallur Taluk Police Station for offences u/s.379, 430, 353 and 307 IPC. The alleged ground case has been registered against the detenu in Crime No.467 of 2018 on the file of Thiruvallur Police Station for offences u/s.379, 430, 353, 307 IPC r/w 21(1) MMDR Act. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded in the ground case and the bail application moved by the detenu in CrI.M.P.No.4051/2018 on the file of learned Principal District and Sessions Judge, Tiruvallur, is pending, he had informed that in a similar case bail has been granted by learned Principal District and Sessions Judge, Tiruvallur, in CrI.M.P.No.2053/2015 dated 06.08.2015 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. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

'5(ii). ... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

impugned detention order passed by second respondent, detaining the detenu Magesh S/o.Krishnan in BCDFGISSSV No.25/2018 dated 04.09.2018 is quashed. 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(CS)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George
Chennai- 600 009
- 2.The District Magistrate & District Collector,
Tiruvallur District,
Tiruvallur.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison II,
Puzhal, Chennai.
- 5.The Joint Secretary to govt.Public (Law and Order)
fort St.George,
Chennai.

+1cc to Mr.R.Sasikumar , Advocate SR.No. 74652

H.C.P.No.2084 of 2018

ASK(26/11/2018)

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