

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.09.2018
CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.867 of 2018

Subetha Bee
W/o.Nazeer Khan ... Petitioner

vs.

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

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

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in connection with the detention order passed by the second respondent dated 12.02.2018 in S.C.No.5 of 2018 against the petitioner's son Imran Khan, aged 21 years, S/o.Nazeer Khan, who is detained in Borstal School, Pudukottai and set aside the detention order and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.A.Balamurugan

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 Imrankhan S/o.Nazeerkhan, who has been branded as "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in S.C.No.05/2018 dated 12.02.2018. Such order is under challenge herein.

2. The ground case has been registered against the detenu in Crime No.11 of 2018 on the file of Shoolagiri Police Station, for offence u/s.394 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

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

4. Amidst several grounds raised, learned counsel for petitioner submits that though the detaining authority has considered the position that the bail application of the detenu in the ground case stood dismissed, he has gone on to inform that there was a likelihood of the detenu being released on bail since in a similar case, bail was granted by Principal Sessions and District Court, Krishnagiri, in Crl.O.P.No.1440 of 2016 dated 09.09.2016.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. 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 order. For the said reason, the order under challenge would have to fall.

C.T.SELVAM, J

AND

M.NIRMAL KUMAR, J

gm

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Imrankhan S/o.Nazeerkhan, made in S.C.No.05/2018 dated 12.02.2018, 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.

[C.T.S., J] [M.N.K., J]

06.09.2018

Index:yes/no

Internet:yes

gm

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600009.

2.The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison, Salem.

5.The Borstal School,
Pudukottai.

H.C.P.No.867 of 2018