

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM:

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

H.C.P.No.971 of 2018

Sharmella Banu @ Nisha
W/o.Karimullah

... Petitioner/
Wife of Detenu

-Vs-

1.The Commissioner of Police,
Chennai City,
Vepery, Chennai - 600007.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records in connection with the order of detention passed by first respondent herein in Memo No.266/BCDFGISSSV/2018 dated 27.04.2018 quashing the same and directing the respondents herein to produce the body and person of the detenu by name Karimullah, S/o.Afsar Hussain, male aged 34 years, now detained at Central Prison, Puzhal, Chennai, before this Court and setting him at liberty forthwith.

For Petitioner : Mr.M.Hussaini Basha

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

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O R D E R

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

Petitioner is the wife of the detenu Karimullah S/o.Afsar Hussain, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of first respondent passed in No.266/BCDFGISSSV/2018 dated 27.04.2018.

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

Sl.No .	Police Station and Crime No.	Offences u/s.
1.	M7 Manali New Town Police Station Crime No.117/2018	448, 342 & 384 IPC @ 147, 148, 448, 342, 384, 506(ii) IPC and 25(3) (i) Arms Act, 1959
2.	M2 Madhavaram Milk Colony Police Station Crime No.105/2018	147, 148, 384 & 506(ii) IPC r/w 25 (i) (a) of Arms Act
3.	M3 Puzhal Police Station Crime No.237/2018	294(b), 387, 506 (ii) and 507 IPC
4.	P3 Vyasarpadi Police Station Crime No.246/2018	341, 294(b), 324 & 307 IPC @ 341, 294 (b), 324, 307 & 379 IPC

The alleged ground case has been registered against the detenu in Crime No.339/2018 for offences u/s.147, 148, 341, 294(b), 323, 397, 336, 427 & 506(ii) IPC r/w 25(3)(i) Arms Act, 1959. 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. The detaining authority noticed that the detenu has moved bail application in the ground case in CrI.M.P.No.6900/2018 on the file of Principal Sessions Court, Chennai and the same was dismissed and again, he moved another bail application in CrI.M.P.No.7263/2018 and bail was granted but since he could not execute sureties, he is still in prison and hence, there is every likelihood of detenu coming out on bail by offering proper sureties. The detaining authority has also noticed that in the adverse cases, the detenu has not moved any bail application but the relatives of detenu were taking steps to move bail application in the adverse cases and hence, there is real possibility of his coming out on bail by filing bail application in the adverse cases since in similar case bail has been granted and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. Once an order of bail has been granted and is pending execution of sureties, then the detaining authority cannot interdict the order of this Court granting bail by

passing the order of detention. 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. For the said reason, the order under challenge would have to fall.

Accordingly, the impugned detention order passed by the first respondent, detaining the detenu, namely, Karimullah S/o.Afsar Hussain, made in No.266/BCDFGISSSV/2018 dated 27.04.2018, 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(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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

H.C.P.No.971 of 2018

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