

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

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

H.C.P.No.980 of 2018

Stella
W/o.Senguttuvan

.... Petitioner

-Vs-

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

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

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention NO.105/BCDFGISSSV/2018 dated, 21/02/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Rajaseran @ Seran, S/O.Senguttuvan, aged 37 years, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner: Mr.S.Suresh
सत्यमेव जयते

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 mother of the detenu viz., Rajaseran @ Seran S/o.Senguttuvan, 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.105/BCDFGISSSV/2018 dated 26.02.2018.

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

Sl.No .	Police Station and Crime No.	Sections of Law
1.	N-1 Police Station, Crime No.115/2018	379 IPC
2.	N-1 Royapuram Police Station, Crime No.127/2018	379 IPC
3.	N-1 Royapuram Police Station, Crime No.118/2018	379 IPC
4.	H-5 New Washermenpet Police Station, Crime No.45/2018	379 IPC
5.	H-1 Washermenpet Police Station, Crime No.59/2018	379 IPC

The alleged ground case has been registered against the detenu in Crime No.64 of 2018 on the file of H-1 Police Station for offences under sections 341, 294(b), 323, 392, 336, 427, 397 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the 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.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.64/2018 on 20.01.2018; whereas the detention order was passed on 21.02.2018, i.e. Nearly after a lapse of 32 days. This inordinate delay in passing of detention order would vitiate the same.

5. Further, the Grounds of Detention would reveal that 5 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.64/2018 for offences u/s 341, 294(b), 323, 392, 336, 427, 397 and 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case before the Principal Sessions Court, Chennai in CrI.MP.No.2849/2018 and the same is pending and he has not moved any bail applications in the adverse cases. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the ground case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of

the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Hence, we are of the view that the detention order is liable to be set aside.

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5. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.105/BCDFGISSSV/2018 dated 21.02.2018, passed by the second respondent is set aside. The detenu, namely, Rajaseran @ Seran S/o.Senguttuvan, aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmi

To:

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

H.C.P.No.980 of 2018

jp(co)
nr 16/10/2018