

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM:

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

H.C.P. No.2262 of 2018

S.Ezhilarasi

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Home and Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.

... 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 proceedings of the 2nd respondent in 405/BCDFGISSSV/2018 dated 20.06.2018 against Mr.Ajithkumar @ Ajith, S/o.Mr.Sekar aged about 23 years and quash the same and consequently direct the respondents herein to produce the detenu who is detained under the Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal before this Hon'ble Court and set him at liberty.

For Petitioner: Mr.P.Saranath

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

ORDER

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

The petitioner, who is the sister of the detenu, namely, Ajithkumar @ Ajith, Son of Sekar, aged 23 years, challenges the impugned order of detention, dated 20.06.2018 in No.405/BCDFGISSSV/2018 detaining her brother as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Prevention of

dangerous activities of Boot leggers, 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	E-3 Tenampet Police Station Crime No.349/2018	147, 148, 342, 307 & 302 IPC

The ground case has been registered against the detenu in Crime No.350/2018 on the file of the Inspector of Police, E-3 Tenampet Police Station for offences u/s. 147, 148, 341, 294(b), 385, 427, 336, 392, 397 & 506(ii) IPC. The detention order has been passed by second respondent in No.405/BCDFGISSSV/2018 on 20.06.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused 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. The Grounds of Detention would reveal that 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.350/2018 for the offences u/s.147, 148, 341, 294(b), 385, 427, 336, 392, 397 & 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case as also in the adverse case and the same are pending before the Principal Sessions Court, Chennai in CrI.M.P.Nos.9220/2018 and 9221/2018 respectively. 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 No.405/BCDFGISSSV/2018 dated 20.06.2018, passed by the second respondent is set aside. The detenu, namely, Ajithkumar @ Ajith, Son of Sekar, aged about 23 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 to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.
3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor
High Court, Madras.

srg 25/01/2019

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