

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM:

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

H.C.P. No.2120 of 2018

Sankar

... Petitioner

-Vs-

1.State of Tamil Nadu represented
by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

... 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 detention order passed by the second respondent pertaining to the order made in C.O.C.No.40/2018 dated 15.09.2018 in detain the detenu under 2(b) of Tamil Nadu Act 14 of 1982, as a BOOTLEGGER and quash the same and direct the respondent to produce the detenu Thoondi @ Balakrishnan, Son of Veerappan, aged about 47 years, who is detained at Central Prison, Tiruchirapalli, before this Hon'ble Court.

For Petitioner : Mr.G.Nirmalkrishnan

For Respondents : Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER

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

Petitioner, who is the brother of the detenu, viz., Thoondi @ Balakrishnan, Son of Veerappan, aged 47 years, challenges the impugned order of detention, dated 15.09.2018 in C.O.C.No.40/2018 detaining his brother as "BOOTLEGGER", as contemplated under Section 2(b) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Sembanarkoil Police Station Crime No.54/2018	4(1) (aaa) r/w 4(1-A) TNP Act 1937
2.	Sembanarkoil Police Station Crime No.134/2018	4(1) (aaa) r/w 4(1-A) TNP Act
3.	Sembanarkoil Police Station Crime No.266/2018	4(1) (aaa) r/w 4(1-A) TNP Act 1937
4.	Sembanarkoil Police Station Crime No.298/2018	4(1) (a) r/w 4(1-A) TNP Act 1937

The ground case has been registered against the detenu in Cr.No.305/2018 on the file of the Sembanarkoil Police Station for offences u/s. 4(1)(i), 4(1)(aaa) r/w 4(1-A) TNP Act 1937. The detention order has been passed by second respondent in C.O.C.No.40/2018 on 15.09.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that 4 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.305/2018 for the offences u/s. 4(1)(i), 4(1)(aaa) r/w 4(1-A) TNP Act 1937. Admittedly, the bail application filed by the detenu in the ground case before the learned Judicial Magistrate Court No.II, Mayiladuthurai, in CrI.M.P.No.3140/2018 and the same was dismissed on 23.08.2018. 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 C.O.C.No.40/2018, dated 15.09.2018, passed by the second respondent is set aside. The detenu, namely, Thoondi @ Balakrishnan, Son of Veerappan, aged 47 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,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

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

3.The Superintendent,
Central Prison, Tiruchirapalli.

4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5.The Public Prosecutor,
High Court, Madras.

CSL/04.01.2019

H.C.P.No.2120 of 2018

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