

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

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

H.C.P.No.2211 of 2018

Gayathiri Devi
W/o.Doman Rajak

... Petitioner

-Vs-

1.The Secretary to Government (Home)
Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The State rep. by
The Commissioner of Police
Greater Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 26.07.2018 in vide Memo No.590/BCDFGISSSV/2018 against the petitioner son D.Munnu Kumar male aged 26 years S/o. Doman Rajak who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner: Mr.P.Dasarathan

For Respondents: Mr.R.Prathap Kumar
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 Munnu Kumar S/o.Doman Rajak, 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.590/BCDFGISSSV/2018 dated 26.07.2018.

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

Sl.No	Police Station and Crime No.	Sections of Law
1.	D6 Anna Square Police Station Cr.No.86/2018	380 IPC
2.	D6 Anna Square Police Station Cr.No.88/2018	380 IPC
3.	D6 Anna Square Police Station Cr.No.87/2018	380 IPC

The alleged ground case has been registered against the detenu in Crime No.89 of 2018 on the file of D-6 Anna Square Police Station for offences under sections 341, 336, 427, 397 & 506(ii) IPC. Aggrieved by the order of detention, the present Writ Petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

4. The detaining authority while noticing that the detenu was remanded in both adverse and ground cases and the bail application moved by the detenu in the ground case in CrI.M.P.No.11081/2018 on the file of learned Principal Sessions Court, was dismissed and the bail applications moved in the adverse cases were pending, he had informed that the relatives of the detenu were taking steps to take the detenu on bail by filing another bail application in the ground case and further, in a similar case bail has been granted by Court of Sessions, Chennai, in CrI.M.P.No.11969/2017 and therefore, there was a real possibility of his coming out on bail in the ground and adverse cases and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order.

5. Though the detaining authority has informed of an effort by the relatives to move another bail petition in the ground case 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. Further, 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 finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Munnu Kumar S/o.Doman Rajak in No.590/BCDFGISSSV/2018 dated 26.07.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

gm/rst
To

1.The Secretary to Government (Home)
Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police
Greater Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2211 of 2018

SP(23/01/2019)