

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

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

H.C.P. No.2200 of 2018

M.Ashina Begam

... Petitioner

-Vs-

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 - 600007.

3.The Inspector of Police,
J-11 Kannagi Nagar Police Station,
Chennai - 600 097.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus against the detention order passed by the 2nd respondent in BCDFGISSSV No.335/2018 dated 22.05.2018 directing the respondents to produce the detenu Askar son of Mohammed Ismail, aged about 23 years, who is confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Soundar Vijay Arul Ram

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

ORDER

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

The petitioner is the mother of detenu, namely, Askar, Son of Mohamed Ismail, age 23 years, challenges the impugned order of detention, dated 22.05.2018 in BCDFGISSSV No.335/2018

detaining him 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.	Kayar Police station Crime No.109/2017	302 IPC
2.	J-11 Kannaki Nagar Police Station Crime No.63/2018	341, 294(b), 392, & 506 (ii) IPC

The ground case has been registered against the detenu in Crime No.231/2018 on the file of the Inspector of Police, J-11 Kannaki Nagar Police Station Crime No.231/2018 u/s 341, 294(b), 392 r/w 397 and 506(ii) IPC. The detention order has been passed by second respondent in BCDFGISSSV No.335/2018 on 22.05.2018.

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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.231/2018 for the offences u/s.341, 294(b), 392 r/w 397 and 506(ii) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Judge at Chellengalpattu, in Crl.M.P.No.1928/2018. 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 BCDFGISSV No.335/2018 dated 22.05.2018, passed by the second respondent is set aside. The detenu, namely, Askar, Son of Mohamed Ismail, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

kkn

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 - 600007.
- 3.The Inspector of Police,
J-11 Kannagi Nagar Police Station,
Chennai - 600 097.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 5.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 6.The Public Prosecutor
High Court, Madras.

H.C.P.No.2200 of 2018

CNR(CO)
GMY(12/12/2018)

WEB COPY