

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM:

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

H.C.P. No.2196 of 2018

Deivanai

... Petitioner

-Vs-

1.The State of Tamil Nadu,
rep. By its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

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

3.The Superintendent,
Central Prison, Salem.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire records leading to the detention of Petitioner's husband Chandrasekar @ Sekar @ Asska Sekar, S/o. Perumal, aged 54 years, presently detained in Central Prison, Salem under Act 14/1982, as a "BOOTLEGGERS" vide the detention order dated 13.08.2018 in C.M.P.NO.26/B.L.A./C2/2018, directing to produce body or the person of the detenu before this Hon'ble Court and thereafter set him at liberty.

For Petitioner : Mr.B.Vasudevan

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Chandrasekar @ Sekar @ Asska Sekar, Son of Perumal, aged 54 years, challenges the impugned order of detention, dated 13.08.2018 in C.M.P.No.26/B.L.A./C2/2018 detaining her husband

as "BOOTLEGGERS", 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.	Salem City, Prohibition Enforcement Wing Crime No.300/2018	4(1) (a), 4(1-A) Tamil Nadu Prohibition Act
2.	Salem City, Prohibition Enforcement Wing Crime No.301/2018	4(1) (a), 4(1-A) Tamil Nadu Prohibition Act

The ground case has been registered against the detenu in Cr.No.895/2018 on the file of the Inspector of Police, Steelplant Prohibition Enforcement Wing for offences u/s. 4(1) (aa), 4(1-A) of Tamil Nadu Prohibition Act and section 420, 468, 471 of IPC. The detention order has been passed by second respondent in C.M.P.No.26/B.L.A./C2/2018 on 13.08.2018.

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 2 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.895/2018 for the offences u/s. 4(1) (aa), 4(1-A) of Tamil Nadu Prohibition Act and section 420, 468, 471 of IPC. Admittedly, the bail application filed by the detenu in the ground case before the Principal Sessions Judge, Salem, in CrI.M.P.No.2564/2018 and the same was dismissed on 09.08.2018. 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 detainee 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.M.P.No.26/B.L.A./C2/2018 dated 13.08.2018, passed by the second respondent is set aside. The detenu, namely, Chandrasekar @ Sekar @ Asska Sekar Son of Perumal, aged about 54 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary of Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate and District Collector,
Salem District, Salem.
- 3.The Superintendent,
Central Prison, Salem.
4. The Joint Secretary to Government,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2196 of 2018

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srg 18/12/2018