

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM:

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

H.C.P. No.2244 of 2018

Mahalakshmi

... Petitioner

-Vs-

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

2.The Commissioner of Police,
Greater Chennai. ... 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 Memo No.850/BCDFGISSSV/2018 dated 19.09.2018 in detain the detenu under 2(f) of Tamil Nadu Act 14 of 1982 as a IMMORAL TRAFFIC OFFENDER and quash the same and direct the respondent to produce the detenu Prabakar @ Shyam, son of Ayyankan, aged 42 years, who is detained at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.N.Velsankar

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 wife of the detenu, namely, Prabhakar @ Shyam, Son of Ayyankan, age 42 years, challenges the impugned order of detention, dated 19.09.2018 in No.850/BCDFGISSSV/2018 detaining her husband as "IMMORAL TRAFFIC OFFENDER", as contemplated under Section 2(g) 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Anti Vice Squad-II, Crime No.42/2018	3(2)a, 4(1) & 5(1)a of ITP Act
2.	Anti Vice Squad-1 Crime No.104/2018	3(2)a, 4(1) & 5(1)a, 6(1) & 7(1) of ITP Act

The ground case has been registered against the detenu in Crime No.45/2018 on the file of the Inspector of Police, Anti Vice Squad Police Station for offences u/s 3(2)a, 4(1) & 5(1)a, 6(1) & 7(1) of ITP Act. The detention order has been passed by second respondent in No.850/BCDFGISSSV/2018 on 19.09.2018.

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.45/2018 for the offences u/s.3(2)a, 4(1) & 5(1)a, 6(1) & 7(1) of ITP Act. Admittedly, the detenu has moved bail application in the second adverse case in Crime No.104/2018 and the same is pending before the IV Metropolitan Magistrate Court, Saidapet, Chennai in CrI.M.P.No.1757/2018. He has also moved bail application in the ground case and 1st adverse case and the same were dismissed on 14.09.2018 by the Judicial Magistrate Court No.1, Poonamallee in CrI.M.P.Nos.4773 & 4775/2018. 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 No.850/BCDFGISSSV/2018 dated 19.09.2018, passed by the second respondent is set aside. The detenu, namely, Prabhakar @ Shyam, Son of Ayyankan, aged about 42 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

kmi

To:

- 1.The Secretary to Government
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Greater 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.

सत्यमेव जयते

H.C.P.No.2244 of 2018

GMV (22/01/2019)

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