

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.11.2018

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

H.C.P. No.2256 of 2018

Jothi

... Petitioner

-Vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.

2.The District Magistrate & District Collector,
Tiruvallur District, Tiruvallur.Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records relating to petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 22.09.2018 on the file of the second respondent herein made in proceedings Memo B.C.D.F.G.I.S.S.S.V.No.29/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Murugan S/o.Sambandan, aged 42 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison-II, Puzhal, Chennai.

For Petitioner : Mr.R.Sasikumar

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

सत्यमेव जयते

ORDER

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

The petitioner, who is the wife of the detenu, namely, Murugan, Son of Sambandhan, age 42 years, challenges the impugned order of detention, dated 22.09.2018 in B.C.D.F.G.I.S.S.S.V. No.29/2018 detaining her husband as "SAND OFFENDER", as contemplated under Section 2(gg) 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.	Vengal Police station Crime No.609/2017	379, 430 IPC

The ground case has been registered against the detenu in Crime No.395/2018 on the file of the Inspector of Police, Periyapalayam Police Station for offences u/s 379, 430, 294(b), 353, 307 IPC R/W 21(1) TNMMDR Act, 1957. The detention order has been passed by second respondent in B.C.D.F.G.I.S.S.S.V. No.29/2018 on 22.09.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.395/2018 for the offences u/s.379, 430, 294(b), 353, 307 IPC R/W 21(1) TNMMDR Act, 1957. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.4561/2018. 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 B.C.D.F.G.I.S.S.S.V. No.29/2018 dated 22.09.2018, passed by the second respondent is set aside. The detenu, namely, Murugan, Son of Sambandhan, aged about 42 years,

is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmi

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The District Magistrate & District Collector,
Tiruvallur District, Tiruvallur.
- 3.The Superintendent,
Central Prison-II, Puzhal,
Chennai-600 066.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Sasikumar, Advocate, S.R.No.81006

H.C.P.No.2256 of 2018

RJI (CO)

rrs 08/01/2019

सत्यमेव जयते

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