

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM:

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

H.C.P. No.2265 of 2018

Bharathi ... Petitioner/wife of the detenue

-Vs-

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Vilupuram District.

... 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 orderin No.C2/21075/2018, dated 24.07.2018 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 an set aside the same and direct the respondent to produce the petitioner's husband Vallalan S/o. Balu aged about 40 years the detenue, now confined in Central Prison, Cuddalore before this Hon'ble Court and set the petitioner's husband Vallalan S/o. Balu aged about 40 years the detenue herein at liberty.

For Petitioner : D.Gopikrishnan

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

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ORDER

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

The petitioner, who is the of the detenue, namely, Vallalan, Son of Balu, aged 40 years, challenges the impugned order of detention, dated 24.07.2018 in No.C2/21075/2018 detaining him as "BOOTLEGGER", as contemplated under Section 2 (b) 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.	Periyathachur Police Station Crime No.217/2018	4(1) (aaa), 4(1-A) Tamil Nadu Prohibition Act 1937.

The ground case has been registered against the detenu in Crime No.221/2018 on the file of the Periyathachur Police Station for offences u/s 4(1)(i), 4(1) (aaa) and 4(1-A) Tamilnadu Prohibition Act 1937. The detention order has been passed by second respondent in No.C2/21075/2018 on 24.07.2018.

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 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.221/2018 for the offences u/s. 4(a) (i), 4(1) (aaa) and 4(1-A) of Tamilnadu Prohibition Act 1937. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Court of Sessions, Viluppuram Sessions Division, Villupuram in CrI.M.P.No.4783/2018. 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.C2/21075/2018 dated 24.07.2018, passed by the second respondent is set aside. The detenu, namely, Vallalan, Son of Balu, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Vilupuram District.
3. The Superintendent,
Central Prison,
Cuddalore. (In duplicate for Communication to Detune)
4. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor
High Court, Madras.

H.C.P.No.2265 of 2018

RJI (CO)
GMY (18/12/2018)

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