

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM:

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

H.C.P. No.2276 of 2018

N.Nasima

... Petitioner

-Vs-

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

2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating in connection with the order of detention passed by the second respondent dated 22.03.2018 vide order No.172/BCDFGISSSV/2018 against the petitioner's son Gemini @ Mohamed Asin @ Gemin Mohamed, son of Nagoorgani, male aged 26 years, now confined at Central prison, Puzhal and set aside the same and direct the respondents to produce the body of detainee before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Ramamoorthy

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

ORDER

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

Petitioner, who is the mother of the detenu, viz., Gemini @ Mohamed Asin @ Gemin Mohamed, Son of Nagoor Gani, aged 26 years, challenges the impugned order of detention, dated 22.03.2018 in BCDFGISSV No.172/2018 detaining her son as "GOONDA", as contemplated under Section 2(f) 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 ground case has been registered against the detenu in Cr.No.56/2018 on the file of the Inspector of Police, R-3 Ashok Nagar Police Station for offences u/s. 341, 294(b), 302 & 506 (ii) IPC. The detention order has been passed by second respondent in BCDFGISSV No.172/2018 on 22.03.2018.

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 a ground case came to be registered against him in Cr.No.56/2018 for the offences u/s. 341, 294(b), 302 and 506(ii) IPC. Admittedly, the bail application filed by the detenu in the ground case before the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.4728/2018 and the same was dismissed on 15.03.2018. 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.172/2018, dated 22.03.2018, passed by the second respondent is set aside. The detenu, namely, Gemini @ Mohamed Asin @ Gemin Mohamed, Son of

Nagoor Gani, aged 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

kkn

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.
- 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.

+1cc To Mr.R.Ramamoorthy, Advocate, SR.NO.86632

kak(25/01/2019)

H.C.P.No.2276 of 2018

सत्यमेव जयते

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