

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P. No.2322 of 2018

M.Malathi

... Petitioner/Wife of the detenu

-Vs-

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Cuddalore District, Cuddalore.

... 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 the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 05.10.2018 on the file of the second respondent herein made in proceedings Memo C3/D.O./61/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Murali, Son of Durai, aged 27 years before this Hon`ble court and set at liberty.

For Petitioner : Mr.J.C.Durairaj

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

Petitioner, who is the wife of the detenu, viz., Murali, Son of Durai, aged 27 years, challenges the impugned order of detention, dated 05.10.2018 in C3/D.O./61/2018 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Tindivanam P.E.Wing Crime No.299/2018	4(1) (aaa), 4(1-A) TNP Act
2.	Vridhachalam P.E.Wing Crime No.559/2018	4(1) (aaa), 4(1-A) TNP Act & 5, 6 & 7 of Tamil Nadu Rectified Spirit Rules 2000
3.	Vridhachalam P.E.Wing Crime No.592/2018	4(1) (aaa), 4(1-A) TNP Act & 5, 6 & 13 of Tamil Nadu Rectified Spirit Rules 2000

The ground case has been registered against the detenu in Cr.No.600/2018 on the file of P.E.Wing, Vridhachalam, for offences u/s 4(1) (aaa), 4(1-A) TNP Act & 14-A of Tamil Nadu Prohibition Act. The detention order has been passed by second respondent in C3/D.O./61/2018.

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 3 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.600/2018 for the offences u/s. 4(1) (aaa), 4(1-A) TNP Act & 14-A of Tamil Nadu Prohibition Act. Admittedly, the bail application filed by the detenu in the ground case before the learned District Sessions Judge, Cuddalore, in CrI.M.P.No.4987/2018 and the same was dismissed on 01.10.2018. Further, he has moved another bail application before the same Court in CrI.M.P.No.5103/2018 and the same was also dismissed on 04.10.2018. 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 passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//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 District Collector and District Magistrate,
Cuddalore District, Cuddalore.
3. The Superintendent,
Central Prison,
Cuddalore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2322 of 2018

sj(co)
nr 24/12/2018