

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

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

H.C.P.No.2365 of 2018

J.Thenmozhi
W/o.Jagadeesan

... Petitioner

vs.

1.State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to petitioner's husband Jagadeesan S/o.Koneri Gounder, aged about 47 years detention under Tamil Nadu Act 14 of 1982 vide detention order dated 24.08.2018 on the file of second respondent herein made in proceedings S.C.No.48/2018 detained at Central Prison, Salem and quash the same as illegal and consequently, direct the respondents herein to produce petitioner's husband before this Court and set him at liberty.

For Petitioner : Mr.R.Vivekananthan

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

O R D E R

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu Jagadeesan S/o.Koneri Gounder, who has been branded as a 'Bootlegger' under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in S.C.No.48/2018 dated 24.08.2018.

2. The detenu came to adverse notice in the following cases:

Sl.No.	Police Station and Crime No.	Offences u/s.
1.	Krishnagiri Prohibition Enforcement Wing, Crime No.121/2018	4(1)(aaa) r/w 4(1-A) of TNP Act, 1937 and 468, 471 and 420 IPC
2.	Krishnagiri Prohibition Enforcement Wing, Crime No.122/2018	4(1)(aaa) r/w 4(1-A) of TNP Act, 1937 and 468, 471 and 420 IPC and 6, 7 of TNRS Rules, 2000.

The alleged ground case has been registered against the detenu in Crime No.819 of 2018 on the file of Krishnagiri Prohibition Enforcement Wing for offences u/s.4(1)(a) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded in the ground case as well in the adverse cases and the bail application moved by him in all such cases were dismissed and the bail applications moved by him in all such cases before this Court are pending, he had informed that in similar cases bail has been granted by this Court as well as by Court below and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

'5(ii). ... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason,

the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by second respondent, detaining the detenu Jagadeesan S/o.Koneri Gounder in S.C.No.48/2018 dated 24.08.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
- 2.The District Collector and District Magistrate,
Krishnagiri District, Krishnagiri.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison, Salem.
(In duplicate for Communication for detenu)
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.

+1 cc to Mr.R.Vivekananthan, Advocate Sr.No.74523

SAI (CO)
CSL/03.12.2018

H.C.P.No.2365 of 2018