

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P. No.2380 of 2018

Suganthi

... Petitioner

-Vs-

1.The District Collector & District Magistrate,
Kanchipuram District, Kanchipuram.

2.The Secretary to Government,
Home Prohibition & Excise Department,
St.George Fort, Chennai - 9.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the 1st respondent herein concerned in order B.C.D.F.G.I.S.S.S.V.No.74/2018, dated 25.09.2018 and set aside the order of detention passed therein against the detenu by namely Azhwan, S/o. Natarajan, Hindu aged about 28 years, my husband, now detained in Central Prison, Vellore.

For Petitioner : Mr.A.Jayaraman

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, Azhwan, Son of Natarajan, aged 28 years, challenges the impugned order of detention, dated 25.09.2018 in B.C.D.F.G.I.S.S.S.V.No.74/2018 detaining her husband as "GOONDA", as contemplated under Section 2(f) 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Kanchi Taluk Police Station Crime No.672/2016	294(b), 307 IPC
2.	Baluchettychatram Police Station Crime No.317/2017	294(b), 506(i), 325 IPC
3.	Baluchettychatram Police Station Crime No.38/2018	379 IPC

The ground case has been registered against the detenu in Crime No.451/2018 on the file of the Inspector of Police, Baluchettychatram Police Station for offences u/s. 341, 294(b), 392, 397, 506(ii) IPC r/w 3(i) Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. The detention order has been passed by first respondent in B.C.D.F.G.I.S.S.S.V.No.74/2018 on 25.09.2018.

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 3 adverse case have been registered against the detenu and a ground case was registered against him in Cr.No.451/2018 for the offences u/s.341, 294(b), 392, 397, 506(ii) IPC r/w 3(i) Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the District Sessions Court - II, Kancheepuram in CrI.M.P.No.3158/2018. 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.74/2018 dated 25.09.2018, passed by the first respondent is set aside. The detenu, namely, Azhwan, Son of Natarajan, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The District Collector & District Magistrate,
Kanchipuram District, Kanchipuram.
- 2.The Secretary to Government,
Home Prohibition & Excise Department,
St.George Fort, Chennai - 9.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2380 of 2018

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