

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

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

H.C.P. No.2396 of 2018

Devi Petitioner/Wife of the Detenu

.. Vs ..

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
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./62/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Sarathkumar, Son of Rayapillai, aged 28 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner : Mr.R.Sasikumar

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.]

Petitioner, who is the wife of the detenu, viz., Sarathkumar, aged 28 years, Son of Rayapillai, challenges the impugned order of detention, dated 05.10.2018 in C3/D.O./62/2018 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Vridhachalam P.E.Wing Crime No.121/2018, Dated 28.02.2018	4(1) (aaa), 4(1-A) & 14 A TNP Act
2.	Vridhachalam P.E.Wing Crime No.559/2018 Dated 05.09.2018	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 Dated 20.09.2018	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) & 14-A of Tamil Nadu Prohibition Act. The detention order has been passed by second respondent in C3/D.O./62/2018.

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. 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) & 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.4988/2018 was dismissed on 01.10.2018. 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 in C3/D.O./62/2018 dated 05.10.2018, passed by the second respondent is set aside. The detenu Sarathkumar, aged about 28 years, Son of Rayapillai, 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 Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Cuddalore District,
Cuddalore.

3.The Superintendent of Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.R.Sasikumar, Advocate sr.no.77586

H.C.P.No.2396 of 2018

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