

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

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

H.C.P.No.2441 of 2018

Maragatham  
W/o. Kanniyappan

... Petitioner

-vs-

1.The State represented  
by its Secretary to Government (Home)  
Prohibition and Excise Department,  
Fort.St.George  
Chennai-600 009.

2.District Magistrate and  
District Collector,  
Namakkal District.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records leading to the detention of the petitioner's husband namely Kanniyappan, son of Veeran, aged about 43 years under Act 14/1982 vide detention order dated 24.01.2018 on the file of the second respondent made in proceedings in C.M.P. No. 01/Goonda/2018/M1.

For Petitioner : Mr.C.D.Sugumar

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

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O R D E R

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

Petitioner is the wife of the detenu Kanniyappan S/o.Veeran, who has been branded as a 'Goonda' under Section 2 (f) of the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C.M.P. No. 01/Goonda/2018/M1 dated 24.01.2018.

2. The alleged ground case has been registered against the detenu in Crime No. 700 of 2017 on the file of the Inspector of Police, Komarapalayam Police Station for offence u/s. 302 IPC. 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 and the bail application moved by the detenu in Crl.M.P.No.28/2018 on the file of learned Principal District Sessions Judge, Namakkal, was dismissed, he had informed that in a similar case bail has been granted by this Court in Crl.OP. NO. 1276 of 2018 dated 08.01.2018 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 the second respondent, detaining the

detenu Kanniyappan S/o.Veeran in C.M.P. No. 01/Goonda/2018/M1 dated 24.01.2018 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/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,  
Government of Tamil Nadu  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 600 009.
2. The District Magistrate and  
District Collector,  
Namakkal District.
- 4.The Public Prosecutor,  
Madras High Court, Chennai.
- 5.The Superintendent of Central Prison,  
Salem.

H.C.P.No.2441 of 2018

CSL/13.02.2019

सत्यमेव जयते

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