

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.2439 of 2018

Maragatham

... Petitioner

-Vs-

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Inspector of Police,
Santhavasal Police Station,
Polur Taluk, Tiruvannamalai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in D.O.No.45/2018-C2 dated 11.10.2018 on the file of 2nd respondent and to produce my husband the detenu namely P.Palani, S/o.Ponnuswamy aged about 42 years before this Hon'ble Court now confined at Central Prison, Vellore and to set him at liberty forthwith.

For Petitioner : Mr.S.L.Venkatesan

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

ORDER

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

The petitioner, who is the wife of the detenu, namely, Palani, Son of Ponnusamy, aged 42 years, challenges the impugned order of detention, dated 11.10.2018 in D.O.No.45/2018-C2 detaining her husband as "Bootlegger", as contemplated under Section 2(b) 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.	Santhavalas Police Station Crime No.268/2018	4(1)(k) TNP Act 1937
2.	Santhavalas Police Station Crime No.278/2018	4(1)(k) TNP Act 1937
3.	Santhavalas Police Station Crime No.375/2018	4(1)(k) TNP Act 1937

The ground case has been registered against the detenu in Crime No.416/2018 on the file of the Inspector of Police, Santhavalas Police Station for offences u/s. 4(1)(i) r/w 4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. The detention order has been passed by second respondent in D.O.No.45/2018-C2 on 11.10.2018.

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.416/2018 for the offences u/s. 4(1)(i) r/w 4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Hon'ble Tiruvannamalai District Sessions Court, in CrI.M.P.No.4050/2018. 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 D.O.No.45/2018-C2 dated 11.08.2018, passed by the second respondent is set aside. The detenu, namely, Palani, Son of Ponnusamy, aged about 42 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

kkn

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Inspector of Police,
Santhavasal Police Station,
Polur Taluk, Tiruvannamalai District.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 6.The Public Prosecutor
High Court, Madras.

H.C.P.No.2439 of 2018

GSP(01/02/2019)