

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.2467 of 2018

M.Devi

... 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,
Kancheepuram District,
Kancheepuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in BCDFGISSSV No.79/2018 dated 08.10.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Murugan, Son of Elumalai, aged about 40 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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

ORDER

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

The petitioner is the wife of the detenu, namely, Murugan, Son of Elumalai, age 40 years, challenges the impugned order of detention, dated 08.10.2018 in BCDFGISSSV No.79/2018 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.	Sadras Police Station Crime No.161/2017	4(1) (aaa) Tamil Nadu Prohibition Act
2.	Sadras Police Station Crime No.12/2018	4(1) (aaa) 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000

The ground case has been registered against the detenu in Crime No.297/2018 on the file of the Inspector of Police, Sadras Police Station for offences u/s. 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 r/w 328 IPC. The detention order has been passed by second respondent in BCDFGISSSV No.79/2018 on 08.10.2018.

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 2 adverse case have been registered against the detenu and a ground case was registered against him in Cr.No.297/2018 for the offences u/s.4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 r/w 328 IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.4176/2018. 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 BCDFGISSSV No.79/2018 dated 08.10.2018, passed by the second respondent is set aside. The detenu, namely, Murugan, Son of Elumalai, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

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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,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

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SP(04/01/2019)

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