

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM:

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

H.C.P. No.2486 of 2018

Kalpana Devi

... Petitioner

-Vs-

1.The State of Tamil Nadu,  
Rep. by its Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat, Fort St George, Chennai 600 009.

2.The District Collector and  
District Magistrate of Krishnagiri District,  
Krishnagiri.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 24.08.2018 in his office Ref.S.C.No.49/2018 against the petitioner's husband by name Thiru.Madesh @ Madeshwaran, S/o. Vedyappan, aged about 40 years, now confined at Central Prison, Salem, Salem District and set aside the same and direct the respondents to produce the above said detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan

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, Madesh @ Madeshwaran, Son of Vedyappan, aged 40 years, challenges the impugned order of detention, dated 24.08.2018 in S.C.No.49/2018 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 ground case has been registered against the detenu in Crime No.813/2018 on the file of the Inspector of Police, Prohibition and Enforcement Wing, Krishnagiri for offences u/s. 4(1)(aaa) r/w. 4(1-A) of Tamil Nadu Prohibition Act 1937 and 468, 471, 420 IPC and 6, 7 of Tamil Nadu Rectified Spirit Rule, 2000. The detention order has been passed by second respondent in S.C.No.49/2018 on 24.08.2018.

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 a ground case was registered against him in Cr.No.813/2018 for the offences u/s.4(1)(aaa) r/w. 4(1-A) of Tamil Nadu Prohibition Act 1937 and 468, 471, 420 IPC and 6, 7 of Tamil Nadu Rectified Spirit Rule, 2000. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Hon'ble High Court, Madras, in Crl.M.P.No.20409/2018. 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 S.C.No.49/2018 dated 24.08.2018, passed by the second respondent is set aside. The detenu, namely, Madesh @ Madeshwaran, Son of VEDIYAPPAN, aged about 40 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

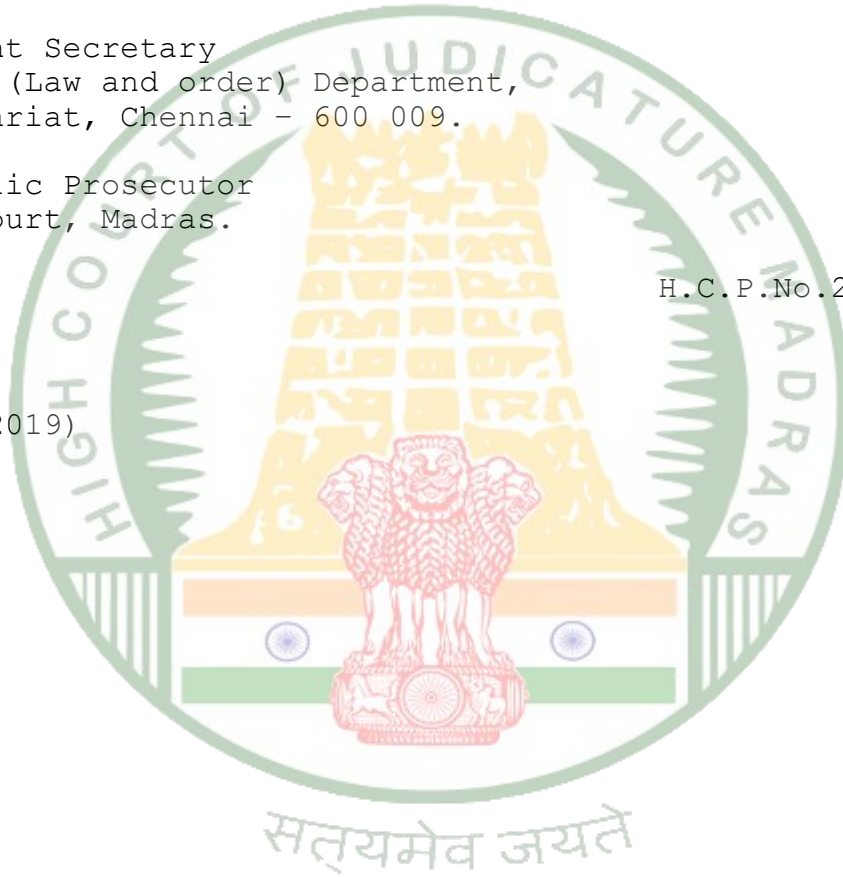
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To:

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

H.C.P.No.2486 of 2018

GN(21/01/2019)



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