

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

H.C.P. No.2495 of 2018

Deepa

... Petitioner

-Vs-

1.State of Tamil Nadu
Rep. by the Secretary to Government,
Home, Prohibition Excise Department,
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, call for the records pertaining to the order of detention passed in No:C3/D.O./60/2018 dated 04.10.2018 passed by the 2nd respondent and set aside the same and direct the respondents to produce my husband by name Murugan, son of Devarasu, aged about 35 years before this Hon'ble Court now confined in Central Prison, Cuddalore set him at liberty.

For Petitioner : Mr.M.Subash

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

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ORDER

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

Petitioner, who is the wife of the detenu, viz., Murugan, Son of Devarasu, aged 35 years, challenges the impugned order of detention, dated 04.10.2018 in C3/D.O./60/2018 detaining her husband as "SAND OFFENDER", as contemplated under Section 2(gg) 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Pudupettai Police Station Crime No.290/2018	Sec.294(b), 353, 430, 379, 307 r/w 21(1) of Mines and Minerals (Devalopment and Regulation) Act 1957

The ground case has been registered against the detenu in Cr.No.355/2018 on the file of the Inspector of Police, Pudupettai Police Station for offences u/s. 379, 430 IPC., r/w Sec.21(1) of Mines and Minerals (Development and Regulation) Act 1957. The detention order has been passed by second respondent in C3/D.O/60/2018 on 04.10.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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 1 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.355/2018 for the offences u/s.379, 430 IPC., r/w Sec.21(1) of Mines and Minerals (Development and Regulation) Act 1957. Admittedly, the bail application filed by the detenu in the ground case before the Court of Judicial Magistrate No.II, Panruti, in CrI.M.P.No.3092/2018 and the same was dismissed on 20.09.2018. 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 detenue 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./60/2018, dated 04.10.2018, passed by the second respondent is set aside. The detenu, namely, Murugan, Son of Devarasu, aged 35 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,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District, Cuddalore.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

CSL/04.01.2019

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