

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM:

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

H.C.P. No.2572 of 2018

Manogari ... Petitioner/Wife of the detenu

-Vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 9.

2.The District Collector and District Magistrate,
Villupuram District,
Villupuram.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 27.10.2018 on the file of the second respondent herein made in proceedings No.C2/30405/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Elumalai, S/o.Krishnan, aged 43 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central prison, Cuddalore.

For Petitioner : Mr.Arivazhagan

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Elumalai, Son of Krishnan, aged 43 years, challenges the impugned order of

detention, dated 27.10.2018 in No.C2/30405/2018 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 ground case has been registered against the detenu in Cr.No.467/2018 on the file of Prohibition Enforcement Wing, Tindivanam for offences u/s 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act 1937 r/w sec 5,6,7 of Tamil Nadu Rectified Spirit Rules, 2000. The detention order has been passed by second respondent in No.C2/30405/2018 on 27.10.2018.

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 a ground case came to be registered against him in Cr.No.467/2018 for the offences u/s. 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act 1937 r/w sec 5,6,7 of Tamil Nadu Rectified Spirit Rules, 2000. Admittedly, the bail application filed by the detenu in the ground case before the Court of Sessions, Viluppuram Sessions Division, Viluppuram, in CrI.M.P.No.6767/2018 and the same was dismissed on 22.10.2018. 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 No.C2/30405/2018 dated 27.10.2018, passed by the second respondent is set aside. The detenu, namely, Elumalai, Son of Krishnan, aged about 43 years, is

directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Villupuram District,
Villupuram.
3. The Superintendent,
Central Prison,
Cuddalore.
(In duplicate for Communication to Detenue)
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Arivazhagan, Advocate, S.R.No. 80095

H.C.P.No.2572 of 2018

RJI (CO)
GN(19/12/2018)

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