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.2655 of 2018

Ayisha Beevi

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
   Rep. by its Secretary,
   Home, Prohibition and Excise (XVI) Department,
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police,
   Office of Commissioner of Police,
   Greater Chennai,
   Vepery, Chennai-600 007. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order Memo No.428/BCDFGISSSV/2018 dated 22.06.2018 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son Mohammed Siddiq, aged about 28 years, the detenu now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.Kannan

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

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ORDER

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

The petitioner, who is the mother of the detenu, namely, Mohammed Siddiq, Son of Ibrahim, age 26 years, challenges the

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impugned order of detention, dated 22.06.2018 in No.428/BCDFGISSSV/2018 detaining her son as "GOONDA", as contemplated under Section 2(f) 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.	G-1 Vepery Police station Crime No.315/2018	392 IPC

The ground case has been registered against the detenu in Crime No.338/2018 on the file of the Inspector of Police, G-1 Vepery Police Station for offences u/s 341, 294(b), 323, 336, 392, 397 and 506(ii) IPC. The detention order has been passed by second respondent in No.428/BCDFGISSSV/2018 on 22.06.2018.

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 1 adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.338/2018 for the offences u/s.341, 294(b), 323, 336, 392, 397 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case. 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.

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6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.428/BCDFGISSSV/2018 dated 22.06.2018, passed by the second respondent is set aside. The detenu, namely, Mohammed Siddiq, Son of Ibrahim, aged about 28 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

kmi

To:

1.The Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Chennai-600 009.

2. The Commissioner of Police,
Office of Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.

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.

H.C.P.No.2655 of 2018

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