IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018

CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.2720 of 2018

Rukku
W/o.Gemburaj ... Petitioner

-vs-

1.The Secretary to the Government,
Government of Tamil Nadu
(Home) Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram. ... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records connected with the order of the second respondent herein in B.C.D.F.G.I.S.S.S.V. No.93/2018, dated 14.11.2018 passed against the petitioner's husband detenu namely Gemburaj, son of Chokkalingam aged about 49 years, who is confined at Central prison, Puzhal, Chennai-66 and set aside the same, consequently, directing the respondents herein to produce the body and person of the detenu before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.A.Murugavel

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

*****

WEB COPY

O R D E R

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu Gemburaj S/o.Chokkalingam, who has been branded as a 'Bootlegger' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.93/2018 dated 14.11.2018.

https://hcservices.ecourts.gov.in/hcservices/

2. The detenu came to adverse notice in the following cases:

SI.No.	Police Station/ Cr. No	Section of Law
1.	PEW, Mamallapuram Cr.No.390/2017	4(1) (a), 4(1-A) (ii) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 r/w 109 IPC
2.	Thirukalukundram Police Station Cr.No.168/2018	4(1) (aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6& 11 of Tamil Nadu Rectified Spirit Rules 2000
3.	Thirukalukundram Police Station Cr.No.240/2018	4(1) (aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000

The alleged ground case has been registered against the detenu in Crime No.661 of 2018 on the file of Thirukalukundram 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. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded in the ground case and the bail application moved by him in Crl.M.P.No.4780 of 2018 on the file of learned Principal District and Sessions Judge, Chengalpattu, was pending, he had informed that in similar cases bail has been granted by learned Principal District and Sessions Judge, Chengalpattu, in Crl.M.P.Nos.2022 and 2561 of 2018 and therefore, there was a real possibility of his coming out on bail by filing bail application in the ground case and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

> '5(ii). ... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by second respondent, detaining the detenu Gemburaj S/o.Chokkalingam in BCDFGISSSV No.93/2018 dated 14.11.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm/rst

To

1.The Secretary to the Government,
Government of Tamil Nadu
(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-600 066.

4.The Public Prosecutor
High Court, Chennai.

H.C.P.No.2720 of 2018

rrs 25/01/2019

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/