



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

H.C.P(MD)No.832 of 2018

Pushpa

: Petitioner

Vs.

1. The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.12/2018 dated 09.04.2018 in detaining the detenu under Section 2(ggg) of the Tamil Nadu Act 14 of 1982 as a Sexual Offender and quash the same and direct the respondents to produce the Detenu namely Sivalingam, S/o.Thangarasu, Male, aged about 48 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner

: Mr.K.M.Karunakaran

For Respondents

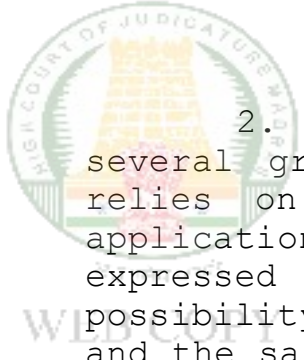
: Mr.S.Chandrasekar

Additional Public Prosecutor.

O R D E R

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

The petitioner is the daughter of the detenu - Sivalingam, S/o.Thangarasu, Male, aged about 48 years. The detenu has been detained by the second respondent by his Detention Order in Cr.M.P.No.12/2018 dated 09.04.2018, holding him to be a "**Sexual Offender**", as contemplated under Section of 2(ggg) Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



2. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the ground case, no bail application was filed, but, still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case and the said subjective satisfaction is nothing but *ipse dixit* not supported by cogent materials.

3. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein no bail application is pending, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negate the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. As rightly contended by the learned counsel appearing for the petitioner, the Detaining Authority referred to the fact that no bail application was filed or pending in the ground case, namely, Crime No.03 of 2018, registered on the file of Jayankondam All Women Police Station. However, the Detaining Authority proceeded further to express a subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application. Such subjective satisfaction arrived at by the Detaining Authority shows total non-application of mind. Thus, on this sole ground alone, the impugned detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition shall stand allowed and the Detention Order, passed by the second respondent, in his proceedings in Detention Order in Cr.M.P.No.12/2018 dated 09.04.2018, is quashed. The detenu, namely, Sivalingam, S/o.Thangarasu, Male, aged about 48 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

1. The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort.St.George, Chennai - 9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Ls/NB

MK/RP/SAR 2/23.08.2018/3P/6C

ORDER MADE IN
H.C.P(MD)No.832 of 2018
Dated: 31.07.2018