

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM:

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

H.C.P. No.53 of 2019

Jothi

... Petitioner

-Vs-

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

2.The Secretary to Government,
Home, Prohibition & Excise Department,
Government of Tamilnadu,
Secretariat, Fort St.George,
Chennai - 600 009.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the first respondent herein in Memo No.1053/BCDFGISSSV/2018 dated 19.11.2018 setting aside the order of detention passed therein and produce me (the detenu) namely Tmt.Jothi, W/o.Rangasamy, aged 50 years has now detained in Central Prison, Puzhal at Chennai and set me at liberty.

For Petitioner : Mr.R.Rajasekaran

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

ORDER

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

Petitioner is the detenu, viz., Jothi, wife of Rangasamy, aged 50 years, challenges the impugned order of detention, dated 19.11.2018 in No.1053/BCDFGISSSV/2018 detaining her "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 ground case has been registered against the detenu in Cr.No.569/2018 on the file of the Inspector of Police, P-1 Pulianthope Police Station for offences u/s Child Missing. The detention order has been passed by first respondent in No.1053/BCDFGISSSV/2018 on 19.11.2018.

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.569/2018 for the offences u/s. Child Missing. Admittedly, the bail application filed by the detenu in the ground case before the V Metropolitan Magistrate, Allikulam, Chennai -3, in CrI.M.P.No.5948/2018 and the same was dismissed on 09.11.2018. 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.1053/BCDFGISSSV/2018, dated 19.11.2018, passed by the first respondent is set aside. The detainee, namely, Jothi, wife of Rangasamy, aged 50 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 Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
2. The Secretary to Government,
Home, Prohibition & Excise Department,
Government of Tamilnadu,
Secretariat, Fort St.George,
Chennai - 600 009.
3. The Superintendent,
Central Prison, Spl Prison for Women,
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.53 of 2019

GMV (28/02/2019)