

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM:

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

H.C.P.No.2010 of 2018

Rajeswari
D/o.Venkatesh

... Petitioner

-Vs-

1.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Egmore, Chennai.

2.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St. George,
Chennai - 600 009.

3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the first respondent herein and made in No.687/B.C.D.F.G.I.S.S.S.V./2018 dated 10.08.2018 and to set aside the same and directing the first respondent to produce the body of the detenu Tmt.Poongavanam, W/o.Venkatesh aged about 45 years and now confined in Special Prison for women, Puzhal, Chennai before this Hon'ble Court and thereby setting her at liberty.

For Petitioner : Mr.T.S.Srinivasan

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

ORDER

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

The petitioner, who is the daughter of the detainee, namely, Poongavanam, Wife of Venkatesh, age 45 years, challenges the impugned order of detention, dated 10.08.2018 in Memo No.687/BCDFGISSSV/2018 detaining her mother as "DRUG OFFENDER", as contemplated under Section 2(e) 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 detainee in Crime No.327/2018 on the file of the Inspector of Police, P-4 Basin Bridge Police Station for offences u/s 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985. The detention order has been passed by first respondent in Memo No.687/BCDFGISSSV/2018 on 10.08.2018.

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 a ground case was registered against him in Cr.No.327/2018 for the offences u/s 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985. Admittedly, the detainee has moved bail application in the ground case and the same is pending before the Principal Sessions Special Court for NDPS Act cases, Chennai in C.M.P.No.596/2018. Therefore, the probability of release of the detainee 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 detainee 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 Memo No.687/BCDFGISSSV/2018 dated 10.08.2018, passed by the first respondent is set aside. The

detenue, namely, Poongavanam, Son of Venkatesh, aged about 45 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lpp/kmi

To

- 1.The Commissioner of Police, Greater Chennai,
Office of the Commissioner of Police,
Egmore, Chennai.
- 2.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat, Fort St. George,
Chennai - 600 009.
- 3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2010 of 2018

GN(08/02/2019)

WEB COPY