

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM:

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

H.C.P. No.2063 of 2018

Tajun Nissa

... Petitioner

-Vs-

- 1.The Secretary of Tamilnadu rep. by its,
Secretary to Government (Home),
Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Vellore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the body of the petitioner's son namely, Adul Ravoof, S/o. Magaboop Basha who is detained in Central Prison, Vellore, before this Hon'ble and set him at liberty forthwith by calling for the records pursuant to the detention order made in C.3/D.O.No.61/2018 dated 27.08.2018 on the file of the second respondent and quash the same.

For Petitioner : Mr.R.Nalliyappan

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

ORDER

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

The petitioner is the mother of the detenu, namely, Abdul Ravoof, Son of Magaboop Basha, aged 22 years, challenges the impugned order of detention, dated 27.08.2018 in C3/D.O.No.61/2018 detaining her son as "SAND OFFENDER", as contemplated under Section 2(gg) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Arcot Town Police Station Crime No.06/2018	U/s. 379, 430, 353, 307 IPC r/w Sec.21(1), Mines and Mineral (Development and Regulation) Act 1957.
2.	Arcot Town Police Station Crime No.129/2018	U/s. 341, 294(b), 353, 506 (i) IPC
3.	Arcot Town Police Station Crime No.413/2018	U/s. 379, 430, 353 & 506 (i) IPC

The ground case has been registered against the detenu in Crime No.449/2018 on the file of the Inspector of Police, Arcot Town Police Station for offences u/s. 379, 430, 353, 307 IPC. The detention order has been passed by second respondent in C3/D.O.No.61/2018 on 27.08.2018.

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 3 adverse cases has been registered against the detenu and a ground case was registered against him in Cr.No.449/2018 for the offences u/s. 379, 430, 353 & 307 IPC @ 379, 430, 353 & 307 IPCr/w Sec 21, Mines and Minerals (Development and Regulation) Act 1957 . Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal Sessions Judge, Vellore in CrI.M.P.No.3550/2018. 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 C3/D.O.No.61/2018 dated 27.08.2018, passed by the second respondent is set aside. The detenu, namely, Abdul Rvoof, Son of Magaboop Basha, aged about 22 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 Secretary to Government (Home),
Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Vellore District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

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SSM(14/02/2019)

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