

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.2075 of 2018

Malliga
W/o.Thirupathi

... Petitioner

-Vs-

1.The District Magistrate &
District Collector,
Thiruvallur,
Thiruvallur District.

2.The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department, (Home)
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 1st Respondent in connection with the order of 1st respondent dated 31.07.2018 in Memo No.22/BCDFGISSSV/2018 has detained the petitioner's husband namely Thirupathi S/o.Late Chellathurai, aged about 47, as a BOOTLEGGER by invoking the Tamil Nadu Act 14 of 1982 and has detained him in the Central Prison, Puzhal, Chennai and set aside the same and direct the respondent to produce the body of the said detenu, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.N.A.Hussainy

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 wife of the detenu, namely, Thirupathi, Son of Chelladurai, age 47 years, challenges the

impugned order of detention, dated 31.07.2018 in B.C.D.F.G.I.S.S.S.V. No.22/2018 detaining her husband as "BOOTLEGGERS", as contemplated under Section 2(b) 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 detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Gummidipoondi PEW Crime No.114/2017	4(1)(a) Tamil Nadu Prohibition Act.
2.	Gummidipoondi PEW Crime No.204/2017	4(1)(a) Tamil Nadu Prohibition Act.
3.	Gummidipoondi PEW Crime No.322/2017	4(1)(a) Tamil Nadu Prohibition Act.
4.	Gummidipoondi PEW Crime No.19/2018	4(1)(a) Tamil Nadu Prohibition Act.

The ground case has been registered against the detenu in Crime No.253/2018 on the file of the Inspector of Police, Gummidipoondi PEW Unit for offences u/s 4(1)(a) r/w 4(1-A) Tamil Nadu Prohibition Act, 1937. The detention order has been passed by first respondent in B.C.D.F.G.I.S.S.S.V. No.22/2018 on 31.07.2018.

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 four adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.253/2018 for the offences u/s 4(1)(a) r/w 4(1-A) Tamil Nadu Prohibition Act, 1937. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Tiruvallur in C.M.P.No.3747/2018. 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 B.C.D.F.G.I.S.S.V. No.22/2018 dated 31.07.2018, passed by the first respondent is set aside. The detenu, namely, Thirupathi, Son of Chelladurai, aged about 47 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

lpp/kmi
To

- 1.The District Magistrate &
District Collector,
Thiruvallur,
Thiruvallur District.
- 2.The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department, (Home)
Secretariat, Fort St.George,
Chennai - 600 009.
3. The Public Prosecutor,
High Court, Madras.
- 4 The Superintendent of Central Prison,
Puzhal, Chennai-6.

+1cc to S.N.A.Hussainy, Advocate Sr.3725

H.C.P.No.2075 of 2018

srg 07/02/2019