

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM:

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

H.C.P.No.2160 of 2018

Sadachi
W/O.Marimuthu

... Petitioner

-Vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.District Magistrate and District Collector,
Salem District,
Salem.

3.The Superintendent,
Central Prison,
Salem - 7.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention in C.M.P.No.27/B.L.A./C2/2018, dated 13.08.2018 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband C.Marimuthu, S/o.Chinnapaiyan, aged about 45 years the detenu, presently confined in Central Prison, Salem before this Hon'ble Court and thereafter set the petitioner's husband C.Marimuthu S/o.Chinnapaiyan, aged 45 years the detenu herein at liberty.

For Petitioner : Mr.P.Subramanian

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, Marimuthu, Son of Chinnapaiyan, age 45 years, challenges the impugned order of detention, dated 13.08.2018 in C.M.P.No.27/B.L.A./C2/2018 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.	Attur Prohibition Enforcement Wing Crime No.19/2018	4(1)(aa), 4(1-A) Tamil Nadu Prohibition Act

The ground case has been registered against the detenu in Crime No.718/2018 on the file of the Inspector of Police, Attur Prohibition Enforcement Wing, for offences u/s. 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act. The detention order has been passed by second respondent in C.M.P.No.27/B.L.A./C2/2018 on 13.08.2018.

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.718/2018 for the offences u/s.4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act. Admittedly, the detenu has not moved any bail application in the ground case. 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 detenue 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 C.M.P.No.27/B.L.A./C2/2018 dated 13.08.2018, passed by the second respondent is set aside. The detenu, namely, Marimuthu, Son of Chinnapaiyan, aged about 45 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 Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.District Magistrate and District Collector,
Salem District,
Salem.
- 3.The Superintendent,
Central Prison,
Salem - 7.
4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Subramanian, Advocate, S.R.No.5011

SSM(14/02/2019)

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