

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM:

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

H.C.P.No.2195 of 2018

Chellammal
W/o.John

... Petitioner

-Vs-

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

2.The Commissioner of Police,
Greater Chennai,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records in No.794/BCDFGISSSV/2018, dated 04.09.2018 on the file of second respondent and quash the detention as illegal and direct the respondents to produce the detenu, Justin John, S/o.John, aged 39 years now confined in Central Prison-II, Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.K.J.Saravanan

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 mother of the detenu, namely, Justin John, Son of John, age 47 years, challenges the impugned order of detention, dated 04.09.2018 in No.794/BCDFGISSSV/2018 detaining her son as "SLUM GRABBER", as contemplated under Section 2(h) 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.	Central Crime Branch-I Crime No.176/2018	419, 420, 465, 468 & 471 IPC

The ground case has been registered against the detenu in CCB Crime No.128/2018 on the file of the Inspector of Police, Anti Land Grabbing Special Cell-2, Central Crime Branch-2, Greater Chennai, for offences u/s 417, 419, 465, 468 and 471 r/w 120(B) IPC. The detention order has been passed by second respondent in No.794/BCDEGISSSV/2018 on 04.09.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in CCB Cr.No.128/2018 for the offences u/s 417, 419, 465, 468 and 471 r/w 120(B) IPC. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Judicial Magistrate Court, Alandur in C.M.P.No.2991/2018. 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.794/BCDFGISSSV/2018 dated 04.09.2018, passed by the second respondent is set aside. The detenu, namely, Justin John, Son of John, 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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison,
Puzhal, Chennai.

SSM(13/02/2019)

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सत्यमेव जयते

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