

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

H.C.P.No.2440 of 2018

Chandraprakash

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Petitioner

-Vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Erode District,
Erode.

...

Respondents

Petition filed under Article 226 of Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in Cr.M.P.No.05/Immoral Traffic Offender/2018 C1 dated 05.06.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's mother namely Poongothai @ Poongodi, wife of Rajan @ Rajasekaran, aged about 44 years detained in Special Prison for Women, Puzhal, Coimbatore, before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.S.Mohamed Ansar

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER

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

Petitioner, who is the son of the detenu, viz., Poongothai alias Poongodi, W/o. Rajan alias Rajasekaran, aged 44 years, challenges the impugned order of detention, in Cr. MP No.05/IMMORAL TRAFFIC OFFENDER / 2013 C1, dated 05.06.2018 detaining her mother as "Immoral Traffic Offender", as contemplated under Section 2(f) 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Coimbatore District Peelamedu Police Station Crime No.761/2015	4(2) (c) 5(1) (b) (c) (d) of the Immoral Traffic (Prevention) Act, 1956
2.	Erode District Perundurai Police Station Crime No.489/2016	5(1) (a) 4(2) (c) of the Immoral Traffic (Prevention) Act,1956
3.	Namakkal District Pallipalayam Police Station Crime No.681/2017	3(1), 4(1) 5(1) (d) of the Immoral Traffic (Prevention) Act, 1956.

The ground case has been registered against the detenu in Cr.No.200/2018 on the file of Erode North Police Station, for offences u/s 3(1), 4(2) (c) and 5(1) (d) of Immoral Traffic (Prevention) Act, 1956. The detention order has been passed by second respondent in No. Cr. MP No.05/IMMORAL TRAFFIC OFFENDER / 2013 C1.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the counter affidavit as also 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. A perusal of the Grounds of Detention would reveal that 3 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.200/2018 for the offences u/s. 3(1), 4(2) (c) and 5(1) (d) of Immoral Traffic (Prevention) Act, 1956 case. Admittedly, the bail application filed by the detenu in the ground case before the learned Principal Sessions Judge, Erode, in CrI.M.P.No.450/2018 and the same was dismissed on 06.04.2018. 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 Proceedings in Cr. MP No.05/IMMORAL TRAFFIC OFFENDER / 2013 C1, dated 05.06.2018, passed by the second respondent is set aside. The detenu, namely, Poongothai alias Poongodi, W/o. Rajan alias Rajasekaran, aged 44 years is directed to be released forthwith unless her presence is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Erode District,
Erode.
- 3.The Superintendent,
Special Prison for Women,
Coimbatore.
- 4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

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GN(13/02/2019)