

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.2410 of 2018

Udhayavani

...

Petitioner

-Vs-

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

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai-600 007.

...

Respondents

Petition filed under Article 226 of Constitution of India, to issue a Writ of Habeas Corpus, call for the records in connection with the order of detention passed by the second respondent dated 28.09.2018 in BCDFGISSSV No.893 of 2018 against the petitioner's mother, the detenu herein, now confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Tmt.Kala @ Kalavathy, W/o.Udhayakumar, aged about 62 years before this Honourable Court and set her at liberty.

For Petitioner : Mr.A.Nirmal Kumar

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 daughter of the detenu, namely, Kala @ Kalavathy, Wife of Udhayakumar, aged 62 years, challenges the impugned order of detention, dated 28.09.2018 in 893/BCDFGISSSV/2018, dated 28.09.2018, detaining his son as "Drug Offender", as contemplated under Section 2(f) 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 ground case has been registered against the detenu in Crime No.448/2018 on the file of K-2 Ayanavaram Police Station for offences u/s 8(c), r/w 20(b) (ii) (B) of NDPS Act. The detention order has been passed by Second respondent in 893/BCDFGISSSV/2018, dated 28.09.2018.

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 the ground case was registered against her in Cr.No.448/2018 for the offences u/s 8(c) r/w 20 (b) (ii) (B) of NDPS Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the learned Principal Sessions Special Court for NDPS Act cases, in CrI. M.P. No.765 of 2018. Therefore, the probability of release of the petitioner 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 893/BCDFGISSSV/2018, dated 28.09.2018, passed by the second respondent is set aside. The detenu, namely, Kala @ Kalavathy, Wife of Udhayakumar aged about 62 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vsi2

To:

- 1.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai-600 007.
- 3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
- 4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

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GMV (08/02/2019)