

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM:

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

H.C.P. No.2517 of 2018

Ruthmary

... Petitioner

-Vs-

- 1.The State rep. by Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
- 2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire record culminating in the passing of the order of detention the petitioner' son, the detenu, under Act 14 of 1982 vide detention order BCDFGISSSV/No.27/2018 dated 16.09.2018 on the file of the second respondent herein and quash the same as illegal and consequently direct the respondents herein to produce the body and person of the detenu by name, Santhosh @ Jabaraj @ Jaba, S/o. Elanchezhiyan, aged about 24 years before this Hon'ble Court and thereafter set him at liberty from the detention, now confined at Central Prison, Puzhal, Chenna.

For Petitioner : Mr.M.Shankar

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu, namely, Santhosh @ Jabaraj @ Jaba, Son of Elanchezhiyan, aged 24 years, challenges the impugned order of detention, dated 16.09.2018 in

BCDFGISSSV No.27/2018 detaining her son as "GOONDA", 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 detenu has come to adverse notice in the following cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Sevvapet Police Station Crime No.603/2017	294(b), 323 & 506(ii), 307 IPC
2.	Sevvapet Police Station Crime No.482/2018	294(b), 326, 307 IPC @ 294 (b), 326, 307, 147, 148, 120(b) IPC

The ground case has been registered against the detenu in Crime No.501/2018 on the file of the Inspector of Police, Sevvapet Police Station for offences u/s. 294(b), 323, 392, 397 IPC r/w 3(1) of TNPPDL Act. The detention order has been passed by second respondent in BCDFGISSSV No.27/2018 on 16.09.2018.

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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.501/2018 for the offences u/s. 294(b), 323, 392, 397 IPC r/w 3(1) of TNPPDL Act. 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 CrI.M.P.No. 4545/2018. 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 detainee 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 BCDFGISSSV No.27/2018 dated 16.09.2018, passed by the second respondent is set aside. The detainee, namely, Santhosh @ Jabaraj @ Jaba, Son of Elanchezhiyan, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
 - 2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.
 - 3.The Superintendent,
Central Prison - II, Puzhal,
Chennai.
 - 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
 - 5.The Public Prosecutor
High Court, Madras.
- +1cc to Mr.M.Sankar, Advocate, S.R.No.8523

H.C.P.No.2517 of 2018

kak(27/02/2019)