

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM:

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

H.C.P. No.2610 of 2018

Sowmya

... Petitioner

-Vs-

1.The State of Tamil Nadu
Rep. By its Secretary,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Commissioners Office,
Salem City, Salem.

3.The Inspector of Police,
Hasthampatty Police Station,
Salem.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention dated 28.09.2018 in detention order No.CMP.No.67/Goonda/Salem City/2018 on the file of the second respondent herein, and quash the same and direct the respondents herein to produce the body of the detenu Ajith @ Ajith Kumar, S/o.Palanivel, Hindu aged about 26 years, who is now confined in Central Prison, Coimbatore before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.Thamarai Selvan.R

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, Ajith @ Ajithkumar, Son of Palanivel, aged 26 years, challenges the impugned order of detention, dated 28.09.2018 in C.M.P.No.67/Goonda/Salem City/2018 detaining her husband 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.	Azhagapuram Police Station Crime No.148/2018	307 IPC
2.	Azhagapuram Police Station Crime No.241/2018	294(b), 323, 506(ii) IPC r/w. 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002

The ground case has been registered against the detenu in Crime No.331/2018 on the file of the Inspector of Police, Hasthampatty Police Station for offences u/s. 302 and 506(ii) IPC. The detention order has been passed by second respondent in C.M.P.No.67/Goonda/Salem City/2018 on 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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.331/2018 for the offences u/s. 302 and 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case as also in the two adverse cases. 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 C.M.P.No.67/Goonda/Salem City/2018 dated 28.09.2018, passed by the second respondent is set aside. The detenu, namely, Ajith @ Ajithkumar, Son of Palanivel, aged about 26 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

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To:

- 1.The State of Tamil Nadu
Rep. By its Secretary,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Commissioners Office,
Salem City, Salem.
- 3.The Inspector of Police,
Hasthampatty Police Station,
Salem.
- 4.The Superintendent,
Central Prison, Puzhal,
Coimbatore.
- 5.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

6.The Public Prosecutor
High Court, Madras.

7. The Superintendent,
District Jail, Attur.

H.C.P.No.2610 of 2018

GMV (28/02/2019)



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