

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM:

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

H.C.P. No.2614 of 2018

S.Pavnu

... Petitioner

-Vs-

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

2.District Collector & District Magistrate,
Tiruvannamalai District, Tiruvannamalai. ... Respondents

PRAYER: Petition filed under Article 226 of the 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 22.10.2018 in D.O.No.48/2018-C2 against the petitioner's husband Silambarasan, male aged 29 years, S/o. Rajendran, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.E.K.Neelamurthy

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 wife of the detenu, namely, Silambarasan, Son of Rajendran, aged 29 years, challenges the impugned order of detention, dated 22.10.2018 in D.O.No.48/2018-C2 detaining her husband as "Sand Offender", as contemplated under Section 2(gg) 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.	Vanapuram Police Station Crime No.216/2017	379 IPC r/w 21 TNMM Act 1957
2.	Vanapuram Police Station Crime No.257/2018	21(1) TNMM Act 1957

The ground case has been registered against the detenu in Crime No.418/2018 on the file of the Inspector of Police, Vanapuram Police Station for offences u/s. 379, 430 IPC r/w 21(1) Tamilnadu Mines and Mineral (Development and Regulations) Act 1957 and sec 3(2) of Tami Nadu Property (Prevention of Damages & Loss) Act, 1992 @ 379, 430, 353, 506(ii) IPC r/w 21(1) Tamilnadu Mines and Mineral (Development and Regulations) Act 1957 and Sec 3(2) of Tamil Nadu Property (Prevention of Damages & Loss) Act, 1992. The detention order has been passed by second respondent in D.O.No.48/2018-C2 on 22.10.2018.

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.418/2018 for the offences u/s. 379, 430 IPC r/w 21(1) Tamilnadu Mines and Mineral (Development and Regulations) Act 1957 and sec 3(2) of Tami Nadu Property (Prevention of Damages & Loss) Act, 1992 @ 379, 430, 353, 506(ii) IPC r/w 21(1) Tamilnadu Mines and Mineral (Development and Regulations) Act 1957 and Sec 3(2) of Tamil Nadu Property (Prevention of Damages & Loss) Act, 1992. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Hon'ble High Court, Chennai in CrI.M.P.No.24548/2018. 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 D.O.No.48/2018-C2 dated 22.10.2018, passed by the second respondent is set aside. The detenu, namely, Silambarasan, Son of Rajendran, aged about 29 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 Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.District Collector & District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2614 of 2018

GMV (14/02/2019)

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