

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.2602 of 2018

Manikandan

... Petitioner

-Vs-

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

2.District Collector and 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 04.10.2018 in D.O.No.43/2018 against the petitioner's mother Indirani, female aged 51 years, W/o. Chinnathambi, who is confined at Special Prison for Women, 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.S.Senthil Vel

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., Indirani, wife of Chinnathambi, aged 51 years, challenges the impugned order of detention, dated 04.10.2018 in D.O.No.43/2018-C2 detaining his mother as "Bootlegger", as contemplated under Section 2(b) 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.	Mangalam Police Station Crime No.598/2017	4(1)(aa) r/w 4(1-A)(ii) TNP Act @ 4(1)(aa)TNP Act 1937
2.	Tiruvannamalai Prohibition Enforcement Wing Crime No.61/2018	4(1)(a) TNP Act 1937
3.	Mangalam Police Station Crime No.201/2018	4(1)(aa) r/w 4(1-A)(ii) TNP Act 1937 @ 4(1)(aa) TNP Act 1937

The ground case has been registered against the detenu in Cr.No.553/2018 on the file of Inspect of Police, Mangalam Police Station for offences u/s. 4(1)(i) r/w 4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. The detention order has been passed by second respondent in D.O.No.43/2018-C2 on 04.10.2018.

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.553/2018 for the offences u/s. 4(1)(i) r/w 4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. Admittedly, the bail application filed by the detenu in the ground case before the Hon'ble District Sessions Court, Tiruvannamalai, in CrI.M.P.No.3832/2018 and the same was dismissed on 26.09.2018. 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.43/2018-C2, dated 04.10.2018, passed by the second respondent is set aside. The detenu, namely, Indirani, wife of Chinnathambi, aged 51 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

kkn

To:

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

+1cc to Mr.P.Nagaraj, Advocate SR.No.8712

GMV (28/02/2019)

H.C.P.No.2602 of 2018