

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P. No.2695 of 2018

S.Jayanthi,
W/o Boopalan

... Petitioner

-Vs-

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

2.The District Collector and
District Magistrate,
Kancheepuram District
Kancheepuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention BCDFGISSSV.NO.86/2018 dated, 01/11/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Boopalan, M/A 42 years, S/O.Loganathan, who is presently detained in the Central Prison, Puzhal-II, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : M/s G.Padmanapan

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

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ORDER

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

The petitioner, who is the wife detenu, namely, Boopalan, Son of Loganathan aged 42 years, challenges the impugned order of detention, dated 01.11.2018 in BCDFGISSSV No.86/2018 detaining his husband as "GOONDA", as contemplated under Section 2(f) 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Padalam Police Station, Crime No.311/2018	430, 379 IPC r/w 21(i) Mines and Minerals Act

The ground case has been registered against the detenu in Crime No.613/2018 on the file of the Inspector of Police, Chengalpattu Taluk Police Station, for the offences u/s 294(b), 353, 307, 506 (ii) IPC and 430, 379 IPC r/w 3(i) Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 r/w 21(i) Mines and Minerals Act. The detention order has been passed by second respondent in BCDFGISSSV No.86/2018 on 01.11.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.613/2018 for the offences u/s.294(b), 353, 307, 506(ii) IPC and 430, 379 IPC r/w 3(i) Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 r/w 21(i) Mines and Minerals Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District Sessions Judge, Chengalpattu in CrI.M.P.No.4224 of 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

detenue 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.86/2018 dated 01.11.2018, passed by the second respondent is set aside. The detenu, namely, Boopalan, Son of Loganathan, aged about 42 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,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2695 of 2018

CSL/08.02.2019

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