

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

CORAM:

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

H.C.P. No.2724 of 2018

A.Arasalan Kumaran

... 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.

3.The Superintendent,
Special Prison for Women,
Vellore.

... 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 19.11.2018 in D.O.No.50/2018-C2 against the petitioner Mother Mangai, female aged 38 years, W/o.Ashok Kumar, 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., Mangai, Wife of Ashokkumar, aged 38 years, challenges the impugned order of detention, dated 19.11.2018 in D.O.No.50/2018-C2 detaining his mother as "Drug Offender", as contemplated under Section 2(e) 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.	Tiruvannamalai Town Police Station Crime No.302/2018	8(c) r/w 20(b)(ii)(A) NDPS Act 1985.
2.	Tiruvannamalai Town Police Station Crime No.1356/2018	8(c) r/w 20(b)(ii)(A) NDPS Act 1985.

The ground case has been registered against the detenu in Cr.No.1360/2018 on the file of the Inspector of Police, Tiruvannamalai Town Police Station for offences u/s. 8(C) r/w 20(b)(ii)(B) NDPS Act 1985. The detention order has been passed by second respondent in D.O.No.50/2018-C2 on 19.11.2018.

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 2 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.1360/2018 for the offences u/s. 8(C) r/w 20(b)(ii)(B) NDPS Act 1985. Admittedly, the bail application filed by the detenu in the ground case before the Hon'ble Special Judge for EC Act Case, Salem, in CrI.M.P.No.432/2018 and the same was dismissed on 01.11.2018. 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.50/2018-C2, dated 19.11.2018, passed by the second respondent is set aside. The detenue, namely, Mangai, Wife of Ashokkumar, aged 38 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 and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent,
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.

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srg 14/02/2019