

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM:

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

H.C.P. No.2772 of 2018

Maheswari

... Petitioner

-Vs-

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

2.The District Collector and District Magistrate,
Cuddalore District, Cuddalore. ... 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 petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 23.11.2018 on the file of the second respondent herein made in proceedings No.C3/D.O./72/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Pazhani, S/o.Gopal, aged 36 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner: Mr.Silambarasan

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

ORDER

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

Petitioner, who is the wife of the detenu, viz., Pazhani, Son of Gopal, aged 36 years, challenges the impugned order of detention, dated 23.11.2018 in C3/D.O./72/2018 detaining her husband as "BOOTLEGGERS", 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Cuddalore P.E.Wing Crime No.161/2018	Sec.4(1)(aaa) & 4(1-A) Tamil Nadu Prohibition Act 1937.
2.	Naduveerapattu Police Station Crime No.121/2018	Sec.4(1)(aa), 4(1-A) & 14A (Transport) of Tamil Nadu Prohibition Act 1937.
3.	Cuddalore P.E.Wing Crime No.700/2018	Sec.4(1)(aaa), & 14A (Transport) of Tamil Nadu Prohibition Act 1937
4.	Cuddalore P.E.Wing Crime No.915/2018	Sec.4(1)(aaa) & 4(1-A) TNP Act.

The ground case has been registered against the detenu in Cr.No.665/2018 on the file of Cuddalore O.T. Police Station for offences u/s. 4(1)(aaa) & 4(1-A) r/w 14-A (Transport) of Tamil Nadu Prohibition Act, 1937. The detention order has been passed by second respondent in C3/D.O/72/2018 on 23.11.2018.

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 4 adverse cases have been registered against the detenu and a ground case came to be registered against him in Cr.No.665/2018 for the offences u/s. 4(1)(aaa) & 4(1-A) r/w 14-A (Transport) of Tamil Nadu Prohibition Act, 1937. Admittedly, the bail application filed by the detenu in the ground case before the learned District Sessions Judge, Cuddalore, in CrI.M.P.Nos.5971/2018, 6146/2018 and 6214/2018. and the same was dismissed on 02.07.2018. 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 C3/D.O./72/2018, dated 23.11.2018, passed by the second respondent is set aside. The detenu, namely, Pazhani, Son of Gopal, aged 36 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 Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District, Cuddalore.
3. The Superintendent,
Central Prison,
Cuddalore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2772 of 2018

SRG 01/02/2019



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