

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM:

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

H.C.P.No.2795 of 2018

Mahalakshmi

-Vs-

...

Petitioner

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat.
2. The District Collector and
District Magistrate,
Vellore District,
Vellore -9. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of Detention passed by the second respondent 26.11.2018 in C3-D.O.No.97/2018 against the petitioner husband Venkatesan, male aged 28 years S/o.Sekar 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.D.Balaji

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

ORDER

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

The petitioner, who is the wife of the detenu, namely, Venkatesan, S/o. Sekar, aged 28 years, challenges the impugned order of detention, in C3/D.O. No.97 of 2018, dated 26.11.2018, detaining her son as "Sand Offender", as contemplated under Section 2(f) 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 case:-

S.No.	Cr.No. & Police Station	Offences
1.	Gudiyatham Taluk Police Station Cr No.173 of 2018	u/s. 379, 430 I.P.C.

The ground case has been registered against the detenu in Crime No.535/2018 on the file of Gudiyatham Taluk Police Station for offences u/s 379, 430 IPC. The detention order has been passed by Second respondent in C3/D.O. No.97 of 2018, dated 26.11.2018

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 3 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.535/2018 for the offences u/s 379, 430 I.P.C. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the learned Judicial Magistrate, Gudiyatham in CrI. M.P. No.6134 of 2018. Therefore, the probability of release of the petitioner 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. No.97 of 2018, dated 26.11.2018, passed by the second respondent is set aside. The detenu, namely, Venkatesan, S/o. Sekar, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

vsi2

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat.
2. The District Collector and
District Magistrate,
Vellore District,
Vellore -9.
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.2795 of 2018

GN(07/02/2019)

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