

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.2947 of 2018

Kauveri

... Petitioner

-Vs-

1.State rep by Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The District Collector & District Magistrate,
Tiruvannamalai District, Tiruvannamalai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order No.51/2018-C2 passed by the second respondent on 04.12.2018 set aside the same and direct the respondents to produce the Shanthi, Wife of Manokaran, aged 42 years, who is now detained in Special Prison for Women, Vellore before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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

ORDER

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

The petitioner is the sister-in-law of the detainee, namely, Shanthi, wife of (Late) Manoharan, aged 42 years, challenges the impugned order of detention, dated 04.12.2018 in D.O.No.51/2018-C2 detaining the detainee as "Bootlegger", as contemplated under Section 2(b) 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Polur Police Station Crime No.941/2017	4(1) (aa) r/w 4(1-A) TNP Act 1937 @ 4(1) (aa) TNP Act 1937
2.	Prohibition Enforcement Wing, Polur Crime No.127/2018	4(1) (aa) r/w 4(1-A) TNP Act 1937 @ 4(1) (aa) TNP Act 1937

The ground case has been registered against the detenu in Crime No.1403/2018 on the file of the Polur Prohibition Enforcement Wing 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.51/2018-C2 on 04.12.2018.

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 2 adverse case have been registered against the detenu and a ground case was registered against him in Cr.No.1403/2018 for the offences u/s. 4(1)(i) r/w 4(1-A)(ii) Tamil Nadu Prohibition Act, 1937. Admittedly, the detenu has moved bail application in the ground case as also in the adverse case and the same is pending before the Hon'ble District Sessions Court, Tiruvannamalai in CrI.M.P.No.5110/2018. 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.51/2018-C2 dated 04.12.2018, passed by the second respondent is set aside. The detainee, namely, Shanthi, wife of (Late) Manoharan, 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 to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector & 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.

H.C.P.No.2947 of 2018

GSP (25/02/2019)

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