

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.2995 of 2018

Kathar Bee

... Petitioner

-Vs-

- 1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Secretariat, Fort St George, 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 entire records connected with the order of the second respondent herein in BCDFGISSSV No.103/2018, dated 18.12.2018 passed against the petitioner's husband detenu, namely, Sett @ Mohammed Sett, son of Abdul Wahab, aged about 50 years, who is confined at Central Prison, Puzhal, Chennai -66 and set aside the same, consequently, directing the respondents herein to produce the body and person of the detenu before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.A.Murugavel

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 wife of the detenu, namely, Sett @ Mohammed Sett, Son of Abdul Wahab, aged 50 years, challenges the impugned order of detention, dated 18.12.2018 in BCDFGISSSV No.103/2018 detaining her husband 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.	Prohibition Enforcement Wing, Madurantakam Crime No.341/2018	4(1)(aaa) 4(1-A) Tamil Nadu Prohibition Act r/w 7 & 11 of Tamil Nadu Rectified Spirit Rules 2000 Transporting
2.	Prohibition Enforcement Wing, Madurantakam Crime No.350/2018	4(1)(aaa) 4(1-A) Tamil Nadu Prohibition Act r/w 7 & 11 of Tamil Nadu Rectified Spirit Rules 2000

The ground case has been registered against the detenu in Crime No.502/2018 on the file of the Prohibition Enforcement Wing, Madurantakam for offences u/s. 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 7 & 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting). The detention order has been passed by second respondent in BCDFGISSSV No.103/2018 on 18.12.2018.

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 cases have been registered against the detenu and a ground case was registered against him in Cr.No.502/2018 for the offences u/s.4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 7 & 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting). Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Hon'ble High Court, Chennai in CrI.O.P.No.29489/2018. 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 BCDFGISSSV No.103/2018 dated 18.12.2018, passed by the second respondent is set aside. The detenu, namely, Sett @ Mohammed Sett, Son of Abdul Wahab, aged about 50 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,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Secretariat, Fort St George, 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.2995 of 2018

GMY (28/02/2019)