

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1228 of 2015

Jakir Hussain
S/o.Mohammed Hussain

... Petitioner

vs.

1. The State represented
by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Coimbatore City,
Coimbatore District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records leading to the detention of J.Mohammed Riyaz, son of Jakir Hussain, aged 30 years under Act 14/1982 vide detention order dated 15.04.2015 on the file of the second respondent made in proceedings in C.No.20/G/IS/2015, quash the same, consequently direct the respondents herein to produce the body and person of J.Mohammed Riyaz, son of Jakir Hussain, who is lodged at Central Prison, Coimbatore, before this Court, set him at liberty.

For Petitioner : Mr.C.D.Sugumar

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

WEB COPY

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

Petitioner is the father of the detenu, J.Mohammed Riyaz, who has been branded as "Drug Offender" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in C.No.20/G/IS/2015 dated 15.04.2015.

2. The alleged ground case has been registered against the detenu on 13.03.2015 by the B-2 R.S.Puram Police Station, Coimbatore City, in Crime No.189 of 2015 for offence u/s. 8(c) r/w 20(b)(ii)(B) NDPS Act. Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the petition, learned counsel for 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. Learned counsel for petitioner submitted that the detention order has been passed on total non-application of mind on the part of the Detaining Authority. He would submit that the Detaining Authority, in paragraph No.6 of the Grounds of Detention, has stated that he is aware of the provisions under section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which is an extraneous consideration on the part of the Detaining Authority. This is indicative of total non-application of mind on the part of the Detaining Authority as the provisions of the said section is not applicable to the case of the detenu herein. Therefore, the Detention order is vitiated and is liable to be set aside.

4. We have heard learned Additional Public Prosecutor on the above submissions.

5. A perusal of the Grounds of Detention, particularly, paragraph 6, would show that the Detaining Authority has stated "I am aware of the provision u/s.37 of Narcotic Drugs and Psychotropic Substances Act, 1985...". This statement of the Detaining Authority shows the non-application of mind on his part, as the quantity involved in the ground case is 1.5 Kgs which is less than the commercial quantity and as such, the provisions of section 37 of the NDPS Act is not applicable. For better appreciation, section 37 of NDPS Act reads thus:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are

reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]”

Thus, an extraneous consideration stands entered upon by the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed against the detenu viz., J.Mohammed Riyaz, S/o.Zahir Hussain, by the second respondent in C.No.20/G/IS/2015 dated 15.04.2015, is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

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Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Coimbatore City,
Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison,
Coimbatore.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.1228 of 2015

RSK(CO)
CA(14/09/2015)