

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Habeas Corpus Petition No.1597 of 2015

Ellammal
W/o.Venkatesan

... Petitioner

-vs-

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

2. The District Revenue Officer and
District Collector and District
Magistrate,
Vellore District, (In Charge),
Vellore - 9.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a writ of Habeas Corpus to call for the records pertaining to detention order passed by second respondent against the detenu Venkatesan S/o.Kasi Gounder, Male, aged about 45 years, in C3/D.O.No.58/2015 dated 13.06.2015, quash the same and consequently, to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.K.S.Thahir

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

(The order of the Court was made by C.T.SELVAM, J.)

Petitioner is the wife of the detenu Venkatesan S/o.Kasi Gounder, who has been branded as "Sand Offender" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in C3/D.O.No.58/2015 dated 13.06.2015. Such order is under challenge herein.

2. The detenu came to adverse notice in Crime No.638 of 2013 on the file of Pallikonda Police Station for offences u/s.379 and 430 IPC and Crime No.223 of 2014 on the file of Pallikonda Police Station for offences u/s.379 and 430 IPC. The ground case has been registered against the detenu in Crime No.138 of 2015 on the file of Pallikonda Police Station for offences u/s.307, 379, 430 IPC r/w 184 M.V.Act and 21(1) Mines and Minerals (Development and Regulation) Act, 1957.

3. Amidst several grounds raised, learned counsel for petitioner submits that towards informing the possibility of the detenu being released on bail, order of this Court in Cr1.O.P.No.12932 of 2015 dated 02.06.2015, wherein anticipatory bail has been granted to the co-accused, has been referred to by the detaining authority. The order copy therein has been furnished to the detenu, but the bail application in such case has not been furnished and that the same adversely has affected the detenu's right of making an effective representation.

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

5. Non furnishing of relevant documents would deprive the detenu the opportunity of making effective representation to the authorities concerned. The same amounts to infringement of right enshrined under Article 22(5) of the Constitution of India and would vitiate the order of detention. Further, non-application of mind on the part of the detaining authority is apparent, since in arriving at the subjective satisfaction that there is likelihood of the detenu being released on bail, the detaining authority has relied upon an order of anticipatory bail passed by this Court and not the order of bail passed by a Court of first instance. For the aforesaid reason, this Court would allow the present petition.

This Habeas Corpus Petition is allowed. The detention order passed by second respondent against the detenu Venkatesan S/o.Kasi

Gounder, made in C3/D.O.No.58/2015 dated 13.06.2015, is quashed. The detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
2. The District Revenue Officer and
District Collector and District
Magistrate,
Vellore District, (In Charge),
Vellore - 9.
3. The Public Prosecutor
High Court, Chennai.
4. The Superintendent of Central Prison,
Vellore.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.A.K.S.Thahir, Advocate, S.R.No.52675

H.C.P.No.1597 of 2015

KSJ(CO)
CA(15/10/2015)