

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2015

CORAM

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

H.C.P.No.1625 of 2015

Jailaja ... Petitioner/mother of the detenu

vs.

- 1.State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police  
Coimbatore City,  
Coimbatore. .... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's son A.Sadham Hussain @ Sadha son of Abdul Kareem M/A 24 years has been detained under Act 14/82 as a Drug Offender vide detention order dated 18.12.2014 on the file of the second respondent herein made in C.No.47/G/IS/2014, quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty.

For Petitioner : Mr.M.Rajavelu  
For Respondents : Mr.M.Maharaja  
Additional Public Prosecutor

O R D E R

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

Petitioner is the mother of the detenu, A.Sadham Hussain @ Sadha, 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.47/G/IS/2014 dated 18.12.2014.

2. The alleged ground case has been registered against the detenu by the B-14 Kuniyamuthur Police Station, Coimbatore, in Crime No.878 of 2014 for offence u/s. 8(c) r/w 20(b)(ii)(B) and 25 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 7, 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 4 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., A.Sadham Hussain @ Sadha, S/o.Abdul Kareem, by the second respondent in C.No.47/G/IS/2014 dated 18.12.2014, 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

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

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To

- 1.State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police  
Coimbatore City,  
Coimbatore.
- 3.The Public Prosecutor,  
High Court, Madras.
- 4.The Superintendent of Central Prison,  
Coimbatore.
- 5.The Secretary to Government,  
Public (law & order),  
Fort St.George, Chennai 600 009.

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CO-CTK  
JD 08/10/2015