

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.6.2017

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

Habeas Corpus Petition No.108 of 2017

Saraswathi

... Petitioner (Wife
of the Detenu)

Vs

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

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

... Respondents

PETITION under Article 226 of The Constitution of India seeking for the issuance of a Writ of Habeas Corpus to call for the records relating to the second respondent pertaining to the detention order made in C.M.P.No.1/ B.L.A/C2/2017 dated 04.1.2017 in detaining the detenu under Tamil Nadu Act 14/1982 as "Bootlegger", quash the same and further direct the respondents to produce the said detenu namely Sankar, S/o.Thiru Kandasamy, aged 25 years, who is detained at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

This Habeas Corpus Petition is instituted by the wife of the detenu, challenging the validity and sustainability of the order of preventive detention passed by the District Magistrate and District Collector, Salem, on 04.1.2017 detaining her 25 years old husband by name Sankar, S/o.Kandasamy, resident of Ramaseshapuram, Attur Taluk, Salem District, as the said

individual answered the definition of "Bootlegger" in terms of Section 2(b) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) (in short referred to as the 'Act' henceforth).

2. On 04.1.2017, the Detaining Authority had also drawn the grounds of detention and made the same available to the detenu. It was set out that on 07.1.2015, at about 7 AM, the Inspector of Police, Attur Prohibition and Enforcement Wing, along with his party, was conducting a watch near Pillayar temple close by Deviakurichi river under the limits of Thalaivasal Police Station. The detenu Sankar was nabbed by the police while he was found carrying 55 litres of illicit arrack in a gunny sack carrying the same on his motorcycle. The detenu, in connection with Crime No.12 of 2015, has been produced before Judicial Magistrate No.II, Attur, who has remanded him to judicial custody. The detenu was enlarged on a conditional bail on 21.1.2015 by the Principal Sessions Judge, Salem. Again on 23.4.2016, at about 14 Hours, the Inspector of Police, Attur Prohibition and Excise Wing, along with the Additional Divisional Excise Officer, Salem and other police personnel, was conducting a watch in connection with prohibition raid near the burial ground of Ramaseshapuram village. Even in this raid, the alleged detenu was found in possession of 20 litres of illicit arrack. Even in this case, a conditional bail order was granted by the Vacational Sessions Judge, Salem on 11.5.2016.

3. The third event narrated in the grounds of detention related to the incident occurred on 23.5.2016 where the alleged detenu was found carrying a gunny sack comprising of 40 packets of illicit arrack of 250 ml each. In this case also, the accused was enlarged on bail. The next incident took place on 17.10.2016 at 7 AM, where the alleged detenu was caught with 20 litres of illicit arrack and even in this case, he was granted bail by this Court on 23.12.2016 and the next incident took place on 24.10.2016, in which case, he was remanded upto 09.1.2017.

4. In the above backdrop of consistent involvement of the detenu and also retrieving illicit arrack from out of his possession, the Detaining Authority has arrived at the subjective satisfaction that the alleged detenu answers the description of "Bootlegger" as defined in Section 2(b) of the Act and hence, the power available to him under Section 3 of the Act should be invoked and to prevent further occurrence of manufacture or sale of illicit arrack, the detenu should be detained and accordingly, passed the order of detention dated 04.1.2017.

5. Heard Mr.D.Veerasekaran, learned counsel appearing for the petitioner and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor for the respondents.

6. It was essentially urged by the learned counsel for the writ petitioner that the Detaining Authority has not applied his mind properly to the relevant facts and circumstances before making up his mind that the order of preventive detention should be passed at all. The learned counsel for the writ petitioner would demonstrate that in the grounds of detention, five different offences allegedly committed by the detenu have been made the basis for his preventive detention.

7. The first of those offences relates to Cr.No.12 of 2015 said to have been committed on 07.1.2015, which is nearly two years prior to the present detention order dated 04.1.2017. The second one relates to Cr.No.209 of 2016 said to have been committed on 23.4.2016, which is fairly remote. The third one relates to Cr.No.191 of 2016 dated 23.5.2016 while the fourth one relates to Cr.No.471 of 2016 relating to an event that had happened on 17.10.2016 and the fifth relates to Cr.No.368 of 2016 said to have occasioned on 24.10.2016 about 7 Hours in the morning.

8. The two fold contentions of the learned counsel for the petitioner are that remote instances have been taken into account and consideration and hence, for lack of proper application of mind, the preventive detention order deserves to be set at naught. Alternatively, the two proximate events, which took place on 17.10.2016 and 24.10.2016 relate to Cr.Nos.471 and 368 of 2016. In the grounds of detention, it was noticed clearly that the detenu was arrested on 03.11.2016 by the Attur Prohibition and Enforcement Wing. As Police formally arrested the detenu on 25.11.2016 in connection with Cr.No.491 of 2016, the Court has extended the remand upto 30.12.2016 and the bail application moved in connection with Cr.No.471 of 2016 was dismissed on 19.12.2016 and another bail application was filed in the High Court in CrI.O.P.No.27265 of 2016 and the bail was granted on 23.12.2016. Dealing with Cr.No.368 of 2016, the same story resulting in his arrest on 03.11.2016 has been set out and in so far as this case is concerned, the Court has extended the remand upto 09.1.2017 in connection with Cr.No.368 of 2016.

9. Thus, the learned counsel for the writ petitioner would urge that though bail was granted by the High Court in Cr.No.27265 of 2016 in respect and in connection with Cr.No.471 of 2016, but nonetheless by virtue of the extension of remand in connection with Cr.No.368 of 2016, the detenu has not come out of the custody and is still in custody till 09.1.2017. Therefore, the fact that bail was granted in connection with

Cr.No.471 of 2016 is of not much significance and hence, the apprehension of the Detaining Authority that the detenu would come out and get back to his old ways of repeating the same conduct is completely ill-founded.

10. It is true that the Detaining Authority has taken into consideration the various criminal cases pending against the detenu. In that process, his involvement in Cr.No.12 of 2015 relating to the event that had occurred on 07.1.2015 onwards has been narrated. It is not as if that the Detaining Authority has taken those criminal cases alone into consideration and account for his satisfaction to preventively detain the detenu. He merely referred to those cases to disclose the tendency of the detenu to get repeatedly involved in criminal cases and offensive conduct whereas the events, which led to criminal cases being booked in Cr.No.471 of 2016 on 17.10.2016 and Cr.No. 368 of 2016 on 24.10.2016, are the ones, which are proximately close to the order of detention dated 04.1.2017.

11. Therefore, for arriving at the subjective satisfaction, the detenu has been getting involved in the offensive conduct and the ordinary Criminal Law is not able to curtail his activities has, thus, been worked out. Only for getting himself satisfied in this regard, all the five instances are, though a couple of them are of remote past, but taken into account and conduct.

12. But, nonetheless, the ground urged by the learned counsel for the petitioner that there was no proper application of mind on the part of the Detaining Authority while passing the impugned order deserves a serious consideration. It is true that in connection with Cr.No.471 of 2016, the bail application moved by him was dismissed by the Principal Sessions Judge, Salem on 19.12.2016. But however, in CrI.O.P.No.27265 of 2016, bail was granted by this Court on 23.12.2016 with regard to the same crime. Unfortunately, there is no mention in the detention order as to whether the bail was granted by this Court imposing conditions or not and as to whether those conditions would be potentially preventing the detenu from repeating his involvement in the same or similar crimes has not been assessed.

13. It is no doubt true that the paper book supplied to the detenu at page 42 contained a copy of the order passed on 23.12.2016 in CrI.O.P.No. 27265 of 2016 enlarging the accused - detenu on bail. This Court directed two sureties as well as the detenu - accused to execute a bond for Rs.10,000/- each to the satisfaction of the learned Judicial Magistrate No.2, Attur and also directed the detenu to report before the respondent Police as and when required for interrogation. Similarly, the order passed by this Court in CrI.O.P.No.26245 of 2016 in connection

with Cr.No.491 of 2016 was placed at page No.86 of the paper book. While granting bail in connection with Cr.No.491 of 2016, this Court directed the two sureties to execute a bond for Rs.10,000/- each to the satisfaction of the learned Judicial Magistrate No.1, Attur. This Court went on to add a further condition that the accused - detenu should report before the respondent Police on every Monday and Friday at 10.30 AM for two weeks and thereafter as and when required for interrogation.

14. Thus, the bail orders passed by this Court, if only were examined seriously by the Detaining Authority, it would have become known to him that the detenu was called upon to appear before the Excise Police on every Monday and Friday at 10.30 AM for two weeks and thereafterwards, as and when for the purpose of interrogation is required. The Detaining Authority ought to have, therefore, considered these orders in their proper perspective. No such consideration has been reflected in the grounds of detention.

15. In *Rekha Vs. State of Tamil Nadu* [reported in 2011 (5) SCC 244], after reviewing the earlier decisions of the Supreme Court, the Supreme Court reiterated that the procedural safeguards are required to be zealously watched and enforced by the Court and their rigour cannot be allowed to be diluted depending upon the nature of allegations contained or thrown against the detenu. The procedural safeguards are the only remedies available to a detenu and they are the silver lining to an otherwise darker cloud. The procedural safeguards have been devised as a check on exercise of power by the Detaining Authority. It would ensure that proper care will be taken while exercising the said power and all factors, which are relevant alone will go into the arena of consideration. For the failure to make a proper analysis and appreciation as to whether the bail order granted by this Court can, itself, act as potential deterrent against the detenu repeating the alleged prejudicial activity or not, has not been assessed carefully, the further detention of the detenu becomes untenable.

16. Accordingly, the Habeas Corpus Petition is allowed and the further detention pursuant to the order of detention passed by the second respondent in C.M.P.No.1/B.L.A/C2/2017 dated 04.1.2017 is not sustainable. The detenu Sankar, S/o.Thiru Kandasamy is directed to be set at liberty forthwith.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

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

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.45385

H.C.P.No.108 of 2017

VGI (CO)
CA(19.07.2017)



WEB COPY