

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

and

THE HONOURABLE MR.JUSTICE S. BASKARAN

H.C.P.No.471 of 2017

M. Arulappan

..Petitioner

Vs.

1. The State of Tamil Nadu, rep. by its Secretary to Government, Home, Prohibition & Excise Department, Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate, Coimbatore District, Coimbatore.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to produce the body of the detenu namely, Divine Balakumar, S/o.M. Arulappan, aged about 25 years, who is confined at Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty forthwith, by calling for the records pertaining to the detention order dated 27.02.2017 made in Cr.M.P. No. 03/G/2017/E1 passed by the 2nd respondent, quash the same as illegal, incompetent and ultra vires.

For Petitioner :: Mr.R. Jayaprakash
For Respondents :: Mr.V.M.R.Rajentren,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.V. MURALIDARAN, J.]
The petitioner, who is the father of the detenu Divine Balakumar, has come up with this habeas corpus petition, challenging the detention order passed by the 2nd respondent,

vide proceedings in Cr.M.P. No. 03/G/2017/E1 dated 27.02.2017.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that when the detenu is in remand and when the bail applications filed by the detenu in respect of first, second and third adverse cases were dismissed and there was no bail application filed by the detenu in respect of the ground case in Crime No. 260 of 2016 on the file of Kovilpalayam Police Station, stating that conditional bail has been granted by the District Principal and Sessions Judge, Coimbatore, in respect of a similar offence, as that of the ground case, the Detaining Authority has passed the impugned order of detention, which is indicative of non-application of mind on the part of the Detaining Authority and therefore, the detention order is liable to be set aside.

4. Heard the learned Additional Public prosecutor, who would submit that the order of detention has been passed on cogent and sufficient materials and the same is sustainable.

5. We have considered the rival submissions. In paragraph No.6 of the Grounds of Detention, it is stated as follows:

"5.Thiru Divine Balakumar has not filed any bail application in Kovilpalayam Police Station Crime No. 260/2016 u/s. 392 @ u/s. 392 r/w 397 I.P.C.. In similar case registered in the Coimbatore District, Mettupalayam Police Station Crime No. 2768/2011 for offence under Sections 392 r/w 397 IPC, the conditional bail was granted to Thiru. Abdul Sathar by the District Principal and Sessions Judge Court, Coimbatore vide C.M.P. No. 217/2012 dated 24.01.2012. Hence, there is a real possibility of Thiru. Divine Balakumar to be released on bail in the ground case of Kovilpalayam Police Station in Crime No. 260/2016 u/s. 392 IPC @ u/w 392 r/w 397 IPC by filing bail application before appropriate court in future....."

A perusal of the above would make it amply clear that admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in respect of the ground case in Crime No. 260/2016 on the file of Kovilpalayam Police Station. Further, there were no cogent and sufficient materials available before the Detaining Authority to

arrive at the subjective satisfaction that there is imminent possibility of the detenu being released on bail. Thus, in our considered view, without making proper application of mind relating to these facts, the Detaining Authority has passed the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 27.02.2017, passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv
To

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

+1cc to Mr.R.Jayaprakesh, Advocate, S.R.No.37367

H.C.P.No. 471 of 2017

KJ(CO)
RS(13/06/2017)