

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

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THE HON'BLE Mr.JUSTICE **A.SELVAM**
and
THE HON'BLE Mr.JUSTICE **P.KALAIYARASAN**

H.C.P.No.619 of 2017

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...Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Home,
Fort St. George, Chennai-9.

2.The District Collector and District Magistrate,
Coimbatore District, Coimbatore.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing the detaining authority to produce the detenu, Jayabal aged about 32 years residing at Door No.2/17, Thiagi Street, Ashok Nagar Upper Area, Goundampalayam, Coimbatore District, presently confined at Central Prison, Coimbatore, calling for the records relating to the preventive detention order in Cr.M.P.No.7/D.O./2017/E1 dated 04.04.2017, on the file of the 2nd respondent and quash the same and set the detenu at liberty.

For Petitioner : Mr.N.Anand Venkatesh

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

ORDER

[Order of the Court was made by A.SELVAM, J.]

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, praying to call for records relating to the detention order passed in Cr.M.P.No.7/D.O./2017/E1 dated 04.04.2017 by the Detaining Authority against the detenu by name, Jayabal, aged about 32 years, S/o.Kaaramani, residing at Door No.2/17, Thiyagi Street, Ashok Nagar Upper Area, Goundampalayam, Coimbatore District and quash the same.

2. The Inspector of Police, Sulur Police Station, Coimbatore District, as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu has involved in the following adverse case:

i) Coimbatore District, Sulur Police Station Crime No.925/2016 dated 01.12.2016 and subsequently, transferred to Coimbatore Narcotic Intelligence Bureau Criminal Investigation Department Crime No.214/2016 under Section 8(c) read with 20(b)(ii)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Further, it is averred in the affidavit that on 03.12.2016, the Sub-Inspector of Police and other Police officials, in the place of occurrence have intercepted a car and ultimately, found that the detenu and one Siva, are in possession of 42kgs of bhang and subsequently, a case has been registered in Crime No.928 of 2016 under Section 8(C) read with 20(b)(ii)(C) and Section 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

4. The Detaining Authority, after considering the averments made in the affidavit and other connected documents has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as Drug Offender, by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the wife of the detenu as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it is averred that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the relevant materials to the Detaining Authority. The Detaining Authority, after considering all the

materials, has rightly branded the detenu as Drug Offender by way of passing the impugned Detention Order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has clinchingly pointed out to the effect that in the adverse case, a bail application has been filed by the detenu and the same has been dismissed on 26.12.2016, whereas, the detention order has been passed on 04.04.2017. Further, in the ground case, commercial quantity of bhang is involved. Further, in the alleged similar case, bail has been granted in respect of non-commercial quantity and the Detaining Authority, without applying his mind has erroneously passed the impugned detention order and therefore, the same is liable to be quashed.

7. The learned Additional Public Prosecutor has equally contended to the effect that the Sponsoring Authority has submitted all the relevant materials so as to invoke Act 14 of 1982 against the detenu. The Detaining Authority, after considering all the relevant materials has passed the impugned detention order by way of branding the detenu as Drug Offender and therefore, the contentions urged on the side of the petitioner is liable to be rejected.

8. It is an admitted fact that in the adverse case, the detenu has filed a bail application and the same has been dismissed on 26.12.2016, whereas, the detention order has been passed on 04.04.2017. After the dismissal of the bail application filed in the adverse case, the detenu has not filed any fresh bail application. Further, in the ground case, the commercial quantity of bhang is involved. But the Detaining Authority has observed in the detention order that since bail application filed in the adverse case has already been dismissed, there is every possibility of coming out of bail by the detenu. The observation made by the Detaining Authority is totally erroneous and in fact that observation has been made due to non-application of mind.

9. Further, it is seen from the records that in the alleged similar case, bail has been granted in respect of non-commercial quantity. Considering the facts and circumstances of the case, this Court is of the view that the Detaining Authority, without applying his mind properly has erroneously passed the impugned detention order and that itself would be sufficient to quash the same.

A.SELVAM, J.
and
P.KALAIYARASAN, J.

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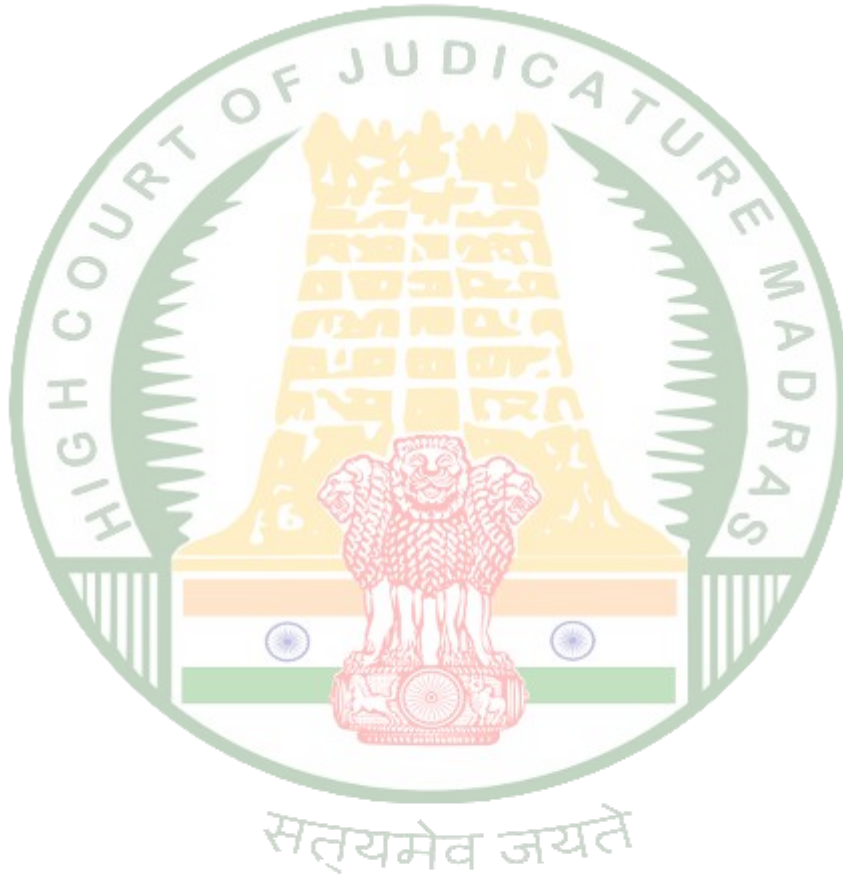
10. In fine, this petition is allowed. The Detention Order dated 04.04.2017 passed in Cr.M.P.No.7/D.O./2017/E1 by the Detaining Authority against the detenu by name, Jayabal, aged about 32 years, S/o.Kaaramani, residing at Door No.2/17, Thiyagi Street, Ashok Nagar Upper Area, Goundampalayam, Coimbatore District, is quashed and directed to set him at liberty forthwith, unless, he is required to be incarcerated in any other case.

[A.S., J.] [P.K., J.]
19.07.2017

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To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Department of Home,
Fort St. George, Chennai-9.
- 2.The District Collector and District Magistrate,
Coimbatore District, Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



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