



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.403 of 2017

Sayed Ali Fathima

... Petitioner

-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records, of the impugned order vide Detention Order in Cr.M.P.No.05 of 2017 dated 16.02.2017 on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenu Jaffer Sathik son of Abdul Jabbar aged 29 years now detained at the Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.B.Pandiyarajan

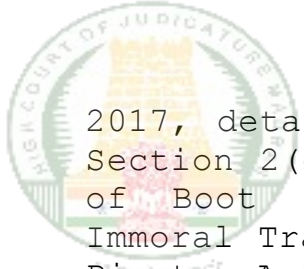
For Respondents : Mr.T.Mohan

Additional Public Prosecutor

O R D E R

[Order of the Court by M.M.SUNDRESH, J.]

The petitioner, who is the mother of the detenu, namely, Jaffer Sathik son of Abdul Jabbar, age 29 years, challenges the impugned order of detention, dated 16.02.2017 in Cr.M.P.No.5 of



2017, detaining her son as "Drug Offender", as contemplated under Section 2(e) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the 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.

4. The learned counsel appearing for the petitioner would submit that the petitioner has been remanded to Judicial Custody in connection with the ground case. The detenu has not filed any bail application in that case. However, the detaining authority after quoting that in the ground case petitioner has not filed any bail application, by relying on the second adverse case registered in Crime No.570/2016 on the file of the Sivakasi Town Police Station for the offence under Sections 8(c) read with 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985, in which the detenu has been released on bail by the Special Court for EC and NDPS Act, Puthukottai, has come to the conclusion that there is real possibility of the detenu coming out on bail. According to the learned counsel, in the second adverse case there was no representation on behalf of the prosecution.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending in the ground case. Though the detaining authority has made reliance on similar case, namely, 2nd adverse case in which the detenu was granted bail, the facts involved in that case is different and as submitted by the learned counsel for the petitioner there was no representation on behalf of the prosecution in that case. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail. Therefore, the said order was passed mechanically without application of mind. Therefore, on this ground, the detention order is liable to be set aside.



7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.5 of 2017, dated 16.02.2017, passed by the second respondent is set aside. The detenu, namely, Jaffer Sathik son of Abdul Jabbar, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Virudhunagar District,
Virudhunagar.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

gsp/akv

RL/6C/3P/RSK/SAR1/9/8/2017

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