

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.162/2018

Govindharaj

... Petitioner

-vs-

1.The Secretary to Government
State of Tamil Nadu
Department of Prohibition & Excise [Home]
Fort St George, Chennai-600 009.

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

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in No.CMP.No.45/Sexual Offender/C2/2017 dated 04.07.2017 on the file of the 2nd respondent herein and set aside the same as illegal and produce the detenu Vijay, son of Govindharaj, aged about 20 years, who is confined at Borstal School, Pudukottai, before this Court, and set him at liberty.

For Petitioner : Mr.K.Ravi
For Respondents : Mr.V.M.R.Rajentran, APP

ORDER

[Order of the Court by C.T.SELVAM, J.]

Petitioner, father of detenu herein, namely, Vijay, son of Govindharaj, aged 20 years, challenges the impugned order of detention, dated 04.07.2017 in C.MP.No.45/Sexual Offender/C2/2017, detaining him as "Sexual Offender", as contemplated under Section 2(ggg) 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 learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3 The learned counsel for the petitioner would submit that the similar case relied on by the Detaining Authority relates to some other accused and not the co-accused of the detenu. He would further submit that the Detaining Authority has not satisfied himself as to the real possibility / imminent possibility of the detenu coming out on bail in the ground case. Further, it is contended that the detenu was arrested in the ground case on 06.06.2017 ; whereas the detention order came to be passed only on 04.07.2017, after a lapse of nearly one month. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court reported in 2005 MLJ (Cr1.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another). Hence, on the above grounds, the detention order is liable to be set aside.

4 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.

4a 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.

5 On a perusal of the impugned order of detention, in particular, the Grounds, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail in the ground case [Cr.No.8/2017]. Admittedly, at the time of passing the Detention Order, no bail application was filed in the said cases. Though the detaining authority has made reliance on similar case in which accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Further, the offence quoted in the similar case relates to 366[A] IPC and sections 7 and 8 of POCSO Act, 2012 ; whereas, in the instant case, viz., ground case, the offences are graver in nature, viz., 366[A], 376[D], 506[i] IPC r/w 5[g] & 6 of POCSO Act, and 3[1][2][ii] and 3[2][va] of SC/ST Prevention of Atrocities Act, 2015 @ 363, 342, 376[D], 506[i],

109 IPC read with 5[g] read with 6, 16 read with 17 & 18 of POCSO Act, 2012 and 3[1][w][i][ii] and 3[2][va] of SC/ST Prevention of Atrocities Amendment Act, 2015, Hence, there is no material to substantiate that there is real / imminent possibility of the detenu coming out on bail and the said order was passed without application of mind. When no bail application is filed, the logical conclusion would be that there is no likelihood of the detenu coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Therefore, on this ground, the detention order is liable to be set aside.

6 Further, a perusal of the grounds of detention as well as the detention order passed by the detaining authority would show that the Detention Order was passed on 04.07.2017 ; but a perusal of the grounds of detention, in particular paragraph No.2, it is seen that the detenu was arrested in the ground case as early as on 06.06.2017. This shows an inordinate delay of nearly 1 month in passing the detention order. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. Learned counsel for the petitioner has rightly placed reliance on the decision in Ramesh's case (cited supra) wherein this Court has held as follows:

"....3.It is brought to our notice by the learned Government advocate that the analyst report was received on 06.12.2014 and the doctor has issued certificate on 07.12.2014. Even in the counter affidavit filed by the first respondent, it is stated that the sponsoring authority has submitted his affidavit only on 15.01.2015. When the sponsoring authority is in possession of the analyst report and the doctor's report even on 06.12.2014 and 07.12.2014, there is no proper explanation for submitting his affidavit till 15.01.2015 for invoking the provisions of Tamil Nadu Act 14 of 1982. Even thereafter, the impugned detention order was passed only on 27.02.2015, i.e. After five weeks of receipt of the affidavit from the sponsoring authority. Though the detaining authority has filed a counter affidavit, there is no explanation for the undue delay in passing the impugned order.

4.In this regard, learned counsel for the petitioner relied on unreported decision of this Court rendered in H.C.P. No.1149 of 1995, dated 13.12.1995. In similar circumstances, after pointing out the unexplained delay between the date of submission of

the affidavit by the sponsoring authority and the detention order, the Division Bench of this Court has concluded thus:

"Such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders....."

7 In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent is set aside. The detenu, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government
State of Tamil Nadu
Department of Prohibition & Excise [Home]
Fort St George, Chennai-600 009.
- 2.The District Magistrate & District Collector,
Salem District, Salem.
- 3.The Superintendent
Borstal School, Pudukkottai.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai-9

H.C.P.No.162/2018

SS (CO)
GN (07/03/2018)