

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P. No.1199 of 2018

Margrate Mary

... Petitioner

-Vs-

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Home Prohibition and Excise Department,
Chennai-600 009.

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention NO.154/BCDFGISSSV/2018 dated, 19.03.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Francis, S/O.Iniyasi, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

Petitioner is the mother of the detenu, viz., Francis, Son of Iniyasi, aged 44 years, challenges the impugned order of detention, dated 19.03.2018 in No.154/BCDFGISSSV/2018 detaining her as "DRUG OFFENDER", as contemplated under Section 2(e) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. The detenu has come to adverse notice in the following cases:-

S.No	Cr.No. & Police Station	Offences
1.	Cr.No.717/2016 P-5 M.K.B.Nagar Police Station	8(c) r/w 20(b) of NDPS Act
2.	Cr.No.1080/2016 P-5 M.K.B.Nagar Police Station	8(c) r/w 20(b) of NDPS Act

The ground case has been registered against the detenu in Cr.No.227/2018 on the file of Inspector of Police, R-10 MGR Nagar Police Station, for offences u/s 8(c) r/w 20(b) (ii) (B) of NDPS Act. The detention order has been passed by first respondent in No.No.154/BCDFGISSSV/2018.

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

4. 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. Further, the detenu was arrested in the ground case on 09.02.2018; whereas the Detention order was passed on 19.03.2018, i.e., after a lapse of 38 days. 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 (Crl.) 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.

5. A perusal of the Grounds of Detention would reveal that a ground case came to be registered against the detenu in Cr.No.227/2018 for the offences u/s. 8(c) r/w 20(b) (ii) (B) of NDPS Act. Admittedly, the bail application filed by the detenu in the ground case before the learned Principal Judge, Special Court under EC Act and NDPS Court, Chennai, in Crl.MP.189/2018 and the same is pending and he has not moved any bail application in the adverse case. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the said case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of 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. Though the detaining authority has made reliance on similar case, in which an 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. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. Hence, 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 19.03.2018 ; but a perusal of the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 09.02.2018. This shows an inordinate delay of nearly 38 days 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 2nd 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(CCC)

//True copy//

Sub Assistant Registrar

kmi

To:

1. The Secretary to Government,
Home Prohibition and Excise Department,
Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.
3. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-600 066.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1199 of 2018

JP (CO)

GMV (29/10/2018)