

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.25/2018

Ammu

... Petitioner

-vs-

State rep.by

1.The Secretary to the Government
Home, Prohibition and Excise Dept.,
Secretariat, Fort St George, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, Chennai.

... 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.672/BCDFGISSSV/2017 dated 31.10.2017 on the file of the Commissioner of Police, Greater Chennai, Chennai, and quash the same as illegal and direct the respondent to produce the detenu Ezhil @ Ezhilenthil, son of Shanmugam, aged about 35 years now confined at Central Prison, Puzhal-II, Chennai and set him at liberty.

For Petitioner : Mr.s.Rajinikanth

For Respondents: Mr.R.Prathap Kumar, APP

ORDER

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

Petitioner, wife of the detenu, namely, Ezhil @ Ezhilenthil, son of Shanmugam, aged 35 years, challenges the impugned order of detention, dated 31.10.2017 in No.672/BCDFGISSSV/2018, detaining the detenu as "Goonda", as contemplated under Section 2(f) 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 As per the grounds of detention dated 31.10.2017, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	N2 Kasimedu PS.Cr.No.1327/2017	457, 380 IPC read with 34 IPC
2	N2 Kasimedu PS Cr.No.1348/2017	457, 380 IPC read with 34 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	N2 Kasimedu PS Cr.No.1403/2017	341, 323, 397, 336, 427 & 506[ii] IPC

3 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.

4 Learned counsel for the petitioner would submit that the similar cases relied on by the Detaining Authority relate to some other accused and not the co-accused of the detenu. He would submit that the Detaining Authority has not satisfied himself as to the real and imminent possibility of the detenu coming out on bail in the ground case as well as in the adverse cases, when the bail applications filed by him in the adverse cases were said to be pending and that he has not moved any further bail application in the ground subsequent to the dismissal of the earlier application. Secondly, it was contended that the detenu was arrested in the ground case on 21.09.2017 ; whereas the Detention order was passed on 31.10.2017, i.e., after a lapse of nearly 1 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 (CrL.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another). This exhibits the non-application of mind on the part of the Detaining Authority. Hence, it is prayed that on the above grounds, the detention order is liable to be set aside.

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, in particular, the Grounds, we find that the Detaining Authority has stated that there was a likelihood of the detenu coming out on bail in the ground case as well as in the adverse cases. Admittedly, at the time of passing the Detention Order, the bail application filed in the ground case in Cr.No.1403/2017, was dismissed in CrI.MP.No.15814/2017 on the file of the Court of Principal Sessions Judge, Chennai, and no further bail application was filed in the said case and the bail applications filed in the adverse cases in CrI.MP.Nos.3414 and 3413/2017 before the 16th Metropolitan Magistrate, George Town, Chennai, were pending on the date of passing of the detention order. Though the detaining authority has made reliance on similar cases in which the accused were granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted baed on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Further, it has been stated that the relatives of the detenu are taking steps to file further bail application in the ground case. Whereas, in the Booklet, there is no material available to substantiate the said statement. 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. The same exhibits the non-application of mind on the part of the Detaining Authority. Therefore, on this ground, the detention order is liable to be set aside.

7 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 31.10.2017 ; but a perusal of the grounds of detention, in particular paragraph No.3, it is seen that the detenu was arrested in the ground case as early as on 21.09.2017. 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....."

8 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.

9 It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

10 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.

-s/d-

Assistant Registrar(CS-II)

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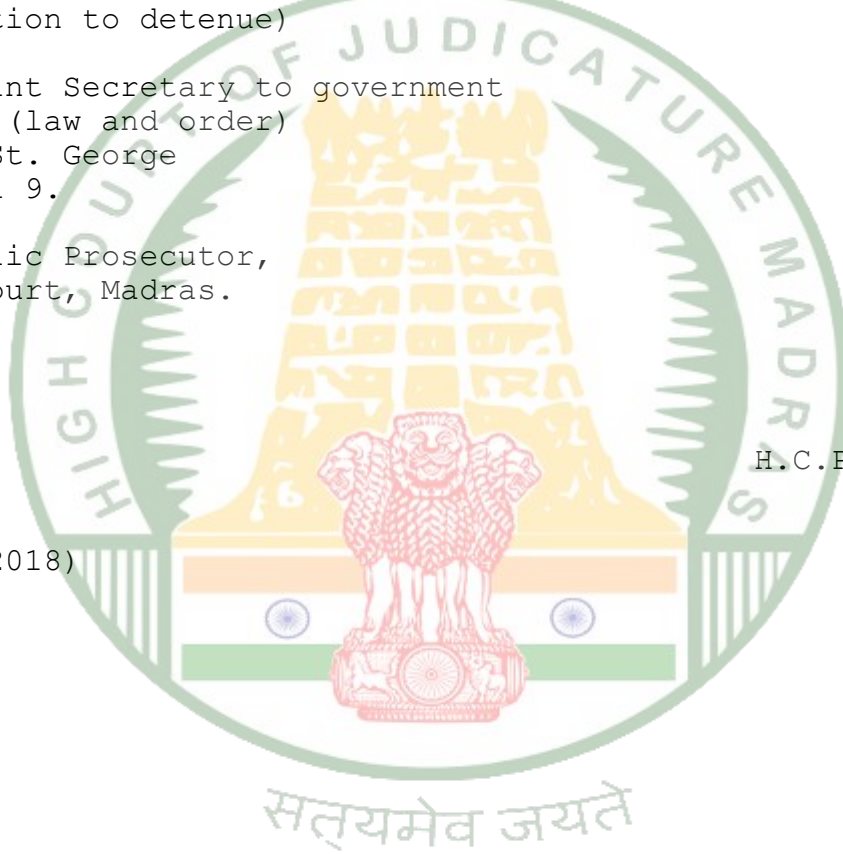
Sub-Assistant Registrar

AP
To

- 1.The Secretary to the Government
State of Tamil Nadu
Home, Prohibition and Excise Dept.,
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Egmore, Chennai-8.
- 3.The Superintendent
Central Prison, Puzhal, Chennai.(in duplicate for
communication to detenue)
4. The Joint Secretary to government
Public (law and order)
Fort. St. George
Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

GMI (CO)
SP(28/03/2018)

H.C.P.No.25/2018



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