

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 263 OF 2018

Marial .. Petitioner/Mother of Detenue

- Vs -

1. The State of Tamil Nadu
rep. By its Addl. Chief Secretary to Govt.
Dept. of Home, Prohibition & Excise
Secretariat, Chennai - 9.
 2. The District Collector &
District Magistrate
Kanchipuram District
Kanchipuram.
 3. The Inspector of Police
Thiruporur Police Station
Kanchipuram District.
- .. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed in Memo No.BCDFGISSSV/93/2017 dated 16.10.2017, passed by the 2nd respondent and set aside the same and direct the respondents to produce the detenu, Ashokkumar, S/o Lakshmanan, lodged in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. G.Pavendhan

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The second respondent herein, clamped an order of detention on Ashokkumar, S/o Lakshmanan, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the petitioner has filed the present habeas corpus petition.

3. The detenu is stated to be in custody since 16.10.2017 due to the preventive detention order passed, even though the detenu was arrested on 24.7.17 in respect of Crime No.97/2016 registered under the head 'Girl Missing' u/s 174 Cr.P.C., which was altered to Section 364 (A) and 302 IPC and Section 4 of the POCSO Act.

4. It is represented by the learned counsel for the petitioner that there is total non-application of mind by the detaining authority and, therefore, the order of detention is liable to be quashed. Though no bail application has been filed by the detenu, which is pending consideration, however, the detaining authority has passed the order of detention stating that there is possibility of the detenu coming out on bail, as in similar cases of this nature, bail has been granted and, therefore, the order of detention passed is not valid.

5. On the above contentions, this Court heard the learned Addl. Public Prosecutor.

6. A perusal of the order of detention reveals that two reasons have been stated by the detaining authority. The first reason being that though the Sessions Court has dismissed the bail application filed by the detenu, however, the relatives of the detenu are likely to move another bail application and that there is likelihood of the detenu coming out on bail. This reasoning of the detaining authority cannot be accepted for the simple reason that coming out on bail is a right of the accused granted under the statute. The likelihood of grant of bail cannot be a ground to detain the detenu under the preventive detention laws and the relevant consideration is the likelihood of the detenu indulging in committing further offences after release on bail.

7. Secondly, the detaining authority has held that in similar cases, the Courts have granted bail and, therefore, there is likelihood of the detenu coming out on bail. Filing of bail petition is a statutory right granted to the accused/detenu under the relevant provisions of the Code of Criminal Procedure. The very fact that the detenu will file bail petition and there is every likelihood of the detenu coming out on bail alone cannot be a ground for the detaining authority to pass an order of detention. It is needless to point out that the subjective satisfaction arrived at by the detaining authority should be based on materials available on record. There being no bail application filed by the detenu, the subjective satisfaction arrived at by the detaining authority pointing out that in similar cases bail has been granted and, therefore, there is likelihood of the detenu coming out on bail clearly shows non application of mind on the part of the detaining authority.

8. The subjective satisfaction arrived at by the detaining authority for detaining the detenu is not based on materials available on record and, therefore, the subjective satisfaction arrived at stands vitiated and, hence, the impugned order is liable to be quashed.

9. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The Ashokkumar, S/o Lakshmanan, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/--

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The State of Tamil Nadu
rep. By its Addl. Chief Secretary to Govt.
Dept. of Home, Prohibition & Excise
Secretariat, Chennai - 9.
2. The District Collector &
District Magistrate
Kanchipuram District
Kanchipuram.
3. The Inspector of Police
Thiruporur Police Station
Kanchipuram District.
4. The Superintendent, Central Prison,
Puzhal, Chennai 66
5. The Joint Secretary to Government
Public (L & O)
Fort Saint George Chennai 9
6. The Public Prosecutor
High Court, Madras -104.

+1cc to Mr.B.Pavendhan, Advocate Sr.No.42193

VGII(CO)

sm:26.7.2018

H.C.P. NO.263 OF 2018