

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1979/2017

Suresh

... Petitioner

-vs-

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

2.The Commissioner of Police
Chennai City Police, Greater Chennai
Commissioner Office, Vepery,
Chennai 00 007.

3.The Inspector of Police
J7 Velachery Police Station,
Chennai

... 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 impugned order in No.472/BCDFGISSSV/2017 dated 04.08.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detainee Suresh, son of Velyathum, aged about 30 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

For Respondents: Mr.M.Mohamed Riyaz, APP

ORDER

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

Petitioner, detenu herein, challenges the impugned order of detention, dated 04.08.2017 in Memo No.472/BCDFGISSSV2017 detaining him son 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 04.08.2017, 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	J7 Velachery PS Cr.No.2658/2017	379 IPC
2	J7 Velachery PS Cr.No.3260/2016	379 IPC
3	J7 Velachery PS Cr.No.552/2017	379 IPC
4	J4 Kotturpuram PS Cr.No.465/2017	380 IPC
5	J4 Kotturpuram PS Cr.No.478/2017	379 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	J7 Velachery PS Cr.No.1473/2017	341, 323, 336, 294[b], 397, 506[ii] IPC

3 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.

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 01.06.2017; whereas the Detention order was passed on 04.08.2017, i.e., after a lapse of two months. 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 ground, the detention order is liable to be set aside.

5 Learned counsel also submitted that the bail applications filed 2nd and 3rd adverse cases [Cr.Nos.3260/2016 and 552/2017] before the Court concerned were dismissed and he has not filed any further bail applications in the said cases. The detenu also has not filed any bail applications in the 1st adverse case [Cr.No.2658/2016] and in the ground case [Cr.No.1473/2017] as on the date of passing of the detention order. Hence, it is the submission of the learned counsel that when the detenu has not filed any bail applications, there is no imminent possibility of the detenu coming out on bail and the detaining authority has passed the detention order without application of mind and the same warrants interference at the hands of this Court.

6 A perusal of the Grounds of Detention would reveal that 5 adverse cases in Cr.Nos.2658/2016 ; 3260/2016, 552/2017, 465/2017 and 478/2017 and a ground case in Cr.No.1473/2017 came to be registered against the detenu. Admittedly, the bail applications filed by the detenu in the 2nd and 3rd adverse cases [Cr.Nos.320/2016 & 552/2017] before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, in CrI.MP.Nos.2071 & 2070/2017 were dismissed and he has not moved any further bail applications in the said cases. Further, it is seen that the detenu has not moved any bail applications in the 1st adverse case [Cr.No.2658/2016] and in the ground case [Cr.No.1473/2017]. Therefore, the likelihood of the detenu 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 adverse cases 1 to 3 and also in the ground 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. Hence, on this sole 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 04.08.2017 ; 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 01.06.2017. This shows an inordinate delay of nearly 2 months 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 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(CS V)

//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 Commissioner of Police
Chennai City Police, Greater Chennai
Commissioner Office, Vepery, Chennai 00 007.
- 3.The Inspector of Police
J7 Velachery Police Station, Chennai.
- 4.The Public Prosecutor, High Court, Madras.
- 5.The Superintendent, Central Prison, Puzhal, Chennai.
- 6.The Joint Secretary to government,
Public (Law and Order), Fort St.George,
Chennai.

H.C.P.No.1979/2017

AK(CO)
GN(05/04/2018)



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