

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2141 of 2017

Saira Banu ... Petitioner/Mother of the Detenue

-vs-

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Fort St George
Chennai 600 009.
- 2.The Commissioner of Police/
Detaining Authority, City Police Office
Huzur Road, Coimbatore City
Coimbatore-18.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 08.11.2017 on the file of the 2nd respondent herein made in proceedings Memo C.No.66/G/IS/2017, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's son namely Arath Nizar @ Nizar, son of Jamesha aged 22 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents: Mr.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court by N.SATHISH KUMAR, J.]

The Petitioner, mother of the detenu Arath Nizar @ Nizar, son of Jamesha, aged 22 years, challenges the impugned order of detention, dated 08.11.2017 in C.No.66/G/IS/2017

detaining her 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. 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.

3. 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 06.10.2017; whereas the Detention order was passed on 08.11.2017, i.e., after a lapse of 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 (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.

4. A perusal of the Grounds of Detention would reveal that a ground case came to be registered against the detenu in Cr.No.868/2017 for the offences u/s.294(b), 323, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 2002. Admittedly, the bail applications filed by the detenu in the ground case before the learned Judicial Magistrate No.VII, Coimbatore in C.M.P.No.10597 and 10980 of 2017 were dismissed on 14.10.2017 and 27.10.2017 respectively and again he has moved bail application before the learned Principal District Sessions Judge, Coimbatore, in Crl.MP.2795/2017 was also dismissed on 03.11.2017. 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. 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. 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 the above grounds, the detention order is liable to be set aside.

5. 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 08.11.2017 ; but a perusal of the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 06.10.2017. This shows an inordinate delay of nearly one 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....."

6. 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.

7. 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 (CO)

//True copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police/
Detaining Authority, City Police Office
Huzur Road, Coimbatore City
Coimbatore.
- 3.The Joint Secretary to Government,
Public (Law and Order) Fort ST.George,
Chennai-9
- 4.The Public Prosecutor
High Court, Madras.
- 5.The Superintendent
Central Prison, Coimbatore.

H.C.P.No.2141 of 2017

VGII (CO)
GN(26/02/2018)