

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

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

H.C.P.No.2143 of 2017

Dhanalakshmi

..Petitioner

vs.

1.The State of Tamil Nadu
rep.by its Secretary to Government,
Home, Prohibition & Excise Department
Chennai 600 009.

2.The Commissioner of Police
City Police Office, Hozur Road,
Coimbatore City, Coimbatore.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 09.11.2017 on the file of the second respondent herein made proceedings Memo C.No.68/G/IS/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely R.Suriya s/o Rajagopal aged 20 years before this Court and set him at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For petitioner : Mr.W. Camyles Gandhi

For RR1 & 2 : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. SATHISH KUMAR, J.)

Petitioner, mother of the detenu viz., R. Suriya, son of Rajagopal, male, aged 20 years, has filed this Petition challenging the order of detention passed by the 2nd respondent in C.No.68/G/IS/2017, dated 09.11.2017, branding him as a

"Goonda" as contemplated u/s.2[f] of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 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. The learned counsel for the petitioner would submit that the Detaining Authority has passed the detention order without due application of mind, as the ground case incident could have been dealt with under ordinary law and there is no necessity to invoke the provisions of preventive arrest. He would further submit that the initial remand order and the remand extension order was not given in the booklet, which shows the detention order is passed in such a hurry manner. The learned counsel for the petitioner would further submit that no bail application is pending. But the detaining authority in the grounds of detention has stated that the detenu is likely to come out on bail, which shows the non application of mind on the part of the detaining authority.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments 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.

5. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, at the time of passing the Detention Order, no bail application was pending in the adverse cases and the ground case. 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 mechanically without application of mind. Even if a bail application is pending then it is only a logical conclusion that there is likelihood of the person in custody would be released on bail. In this case, the petitioner was arrested on 23.09.2017; whereas the detention order was passed on 09.11.2017 i.e., after a lapse of month. This inordinate delay in passing of detention order remains unexplained. Further, there is no counter filed in this case since the notice taken by the learned Additional Public Prosecutor on 15.11.2017. In such view of the matter, the impugned detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.68/G/IS/2017, dated 09.11.2017, passed by the 2nd respondent is set aside. The

detenu, namely, Thiru. R.Suriya, son of Rajagopal, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ggs

To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Chennai 600 009.
- 2.The Commissioner of Police
City Police Office, Hozur Road,
Coimbatore City, Coimbatore.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government
Public Law & order Fort St. George,
Chennai-9
- 5.The Public Prosecutor, High Court, Madras.

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EU(07/03/2018)

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