

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2308 of 2017

M.Amarajothi ... Petitioner

-vs-

1. State of Tamil Nadu
Rep. by its Secretary to Government,
Prohibition & Excise Department,
Fort St George, Chennai 600 009.
2. The District Collector and District Magistrate,
Perambalur District.
Perambalur. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to produce the body of the petitioner's son namely Marudhai, son of Manickam, who is detained in Central Prison, Trichy before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 16.11.2017 made in CrI.M.P.No.20/2017 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

The Petitioner, father of the detenu Marudhai, son of Manickam, aged about 32 years, challenges the impugned order of detention, in CrI.M.P.No.20/2017, dated 11.12.2017 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 on 09.10.2017; whereas the Detention order was passed on 16.11.2017, i.e., with an inordinate delay of more than 30 days.

4. Further, though bail was granted to the co-accused in Paravakkottai Police Station Crime No.35 of 2017 and K.K.Nagar Police Station Crime No.636 of 2015, the bail application filed by the detenu in V.Kalathur Crime No.421 of 2017 was dismissed. the detenu had not filed any bail application in Crime No.713 of 2017. Whereas, the detaining authority took note of the fact that the co-accused obtained bail in similar cases, came to the conclusion that there is likelihood of the detenu being released on bail in other cases also. Therefore, the likelihood of the detenu coming out on bail is very remote. When no bail application filed by the detenu in V.Kalathur Crime No.421 of 2017 was dismissed, 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. Normally, bails are granted by the Courts based on the facts and circumstances of each case. Hence, the said order was passed mechanically passed without application of mind.

5. In this case, the petitioner was arrested on 09.10.2017; whereas the detention order was passed on 16.11.2017 i.e., after more than 30 days. This inordinate delay in passing of detention order remains unexplained. Further, there is no counter filed in this case inspite of the notice taken by the learned Additional Public Prosecutor on 05.12.2017. 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 CrI.M.P.No.20/2017 dated 16.11.2017, passed by the second respondent is set aside. The detenu, namely, Marudhai, son of Manickam, aged about 32 years,

is directed to be released forthwith unless his detention is required in connection with any other case.

vrc

Sd/-
Assistant Registrar
/TRUE COPY/

Sub-Assistant Registrar

To:

1. The Secretary to Government,
Prohibition & Excise Department,
Fort St George, Chennai 600 009.
2. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai-9.
3. The District Collector and District Magistrate,
Perambalur District.
Perambalur.
4. The Superintendent,
Central Prison,
Tiruchirapalli.
5. The Public Prosecutor
High Court, Madras.

+1 CC to M.S.B.Kumarasamy, Advocate in SR.NO. 19020

सत्यमेव जयते

H.C.P.No.2308 of 2017

NRI [CO]
MLT-28/03/2018

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