

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2328 of 2017

Vishalakshi

... Petitioner

-vs-

1. The District Collector and District Magistrate,
Coimbatore District,
Coimbatore.

2. The Secretary,
Prohibition & Excise Department (Home),
Government of Tamil Nadu,
Fort St George, Chennai 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records of the first respondent in Cr.M.P.No.17/B.L./2017/E1, dated 01.11.2017 and set aside the same and direct the respondents to produce the detenu Nandha Kumar, S/o. Late Govindasamy, aged about 44 years, now confined in Central Jail, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents: Mr.V.M.R.Rajentran

Additional Public Prosecutor

ORDER

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

The Petitioner, mother of the detenu Nandha Kumar, S/o. Late Govindasamy, aged about 44 years, challenges the impugned order of detention, in Cr.M.P.No.17/B.L./2017/E1, dated 01.11.2017 detaining her son as "Bootlegger", as contemplated under Section 2(b) 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 11.10.2017; whereas the Detention order was passed on 01.11.2017, i.e., with an inordinate delay of more than 20 days.

4. Further, the bail application filed by the detenu in Crime No.314 of 2017 was dismissed and the subsequent bail application filed by the detenu is pending adjudication. Whereas, the detaining authority took note of the similar case registered in Crime No.238 of 2017 and came to the conclusion that there is likelihood of the detenu being released on bail. Therefore, the likelihood of the detenu coming out on bail is very remote. When a bail application is pending, 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 without application of mind.

5. In this case, the petitioner was arrested on 11.10.2017; whereas the detention order was passed on 01.11.2017 i.e., after more than 20 days. This inordinate delay in passing of detention order remains unexplained. Further, the contraband has been seized in this case on 15.04.2017 and the same has been sent to the Court only on 19.04.2017 and this delay also remains unexplained. Further, there is no counter filed in this case inspite of the notice taken by the learned Additional Public Prosecutor on 06.12.2017. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the first 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 IX)

//True copy//

Sub Assistant Registrar

vrc

To:

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

+1cc to Mr.A.Mohammed Ismail, Advocate SR.No.9291

H.C.P.No.2328 of 2017

VGII (CO)
GN (19/03/2018)

सत्यमेव जयते

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