

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED:15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2342/2017

Loganayagi

... Petitioner

-vs-

1.Government of Tamil Nadu  
rep.by the Secretary,  
Home, Prohibition and Excise [XVI] Department,  
Fort St George, Chennai - 600 009.

2.The Commissioner of Police  
O/o.The Commissioner of Police  
Vepery, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order memo No.592/BCDFGISSSV/2017 dated 26.09.2017 on the file of the 2<sup>nd</sup> respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son C.Shankar @ Shankar Bai aged about 23 years, the detenu now confined in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.K.Kannan

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

ORDER

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

Petitioner, mother of the detenu, namely, Shankar @ Shankar Bai, S/o.Chandrasekar, age 23 years, challenges the impugned order of detention, dated 026.09.2017 in Memo No.592/BCDFGISSSV/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 learned counsel for the petitioner and  
<https://hcservices.ecourts.gov.in/hcservices/> learned Additional Public Prosecutor appearing for the

respondents. We have also perused the records produced by the Detaining Authority.

3 Learned counsel for the petitioner would submit that the similar case relied on by the Detaining Authority relates to some other accused and not the co-accused of the detenu. He would submit that the Detaining Authority has not satisfied himself as to the real possibility of the detenu coming out on bail in the ground case when the bail application filed by him in the said case is said to be pending. Secondly, it was contended that the detenu was arrested in the ground case on 07.08.2017 ; whereas the Detention order was passed on 26.09.2017, i.e., after a lapse of 1 ½ 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). Thirdly, the Detaining Authority has not made a mention as to whether the detenu has moved any bail applications in the adverse cases or whether he has been granted bail in those cases This exhibits the non-application of mind on the part of the Detaining Authority. Hence, it is prayed that on the above grounds, the detention order is liable to be set aside.

4 Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit 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 On a perusal of the impugned order of detention, in particular, the Grounds, we find that the Detaining Authority has stated that there was a likelihood of the detenu coming out on bail in the ground case. Admittedly, at the time of passing the Detention Order, the bail application filed in the ground case in Cr.No.652/2017, was pending in Cr1.MP.No.1373/2017 on the file of the Court of Mahila Sessions Judge, Tiruvallur, as on the date of passing of the detention order. 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 baed 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. Further, the Detaining Authority has not even mentioned under the order as to whether or not, the detenu has filed any bail applications in teh adverse cases and without referring to those materials, the Detaining Authority passed an order which exhibits the non-application of mind on the part of the

Detaining Authority. Therefore, on this ground, the detention order is liable to be set aside.

6 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 26.09.2017 ; 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 07.08.2017. This shows an inordinate delay of nearly 1 /12 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....."

7 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.

8 It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9 In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second 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 IV)

//True Copy//

Sub Assistant Registrar

AP  
To

- 1.The Secretary,  
Government of Tamil Nadu  
Home, Prohibition and Excise [XVI] Department,  
Fort St George, Chennai - 600 009.
- 2.The Joint Secretary to Government  
Public (Law & Order), Fort St. George,  
Chennai-9.
- 3.The Commissioner of Police  
O/o.The Commissioner of Police  
Vepery, Chennai.
- 4.The Public Prosecutor,  
High Court, Madras.
- 5.The Superintendent  
Central Prison-II, Puzhal,  
Chennai.

LRS (CO)  
sm:6.3.2018

H.C.P.No.2342/2017