

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.2446 of 2017

Pathiyanathan ... Petitioner

-vs-

1. The District Collector and District Magistrate,
Tiruppur District,
Tiruppur.
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.12/Bootlegger/2017, dated 11.12.2017 and set aside the same and direct the respondents to produce the detenu Doss @ Arokkiadoss, S/o.Pathiyanathan, aged about 47 years, now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.A.Mohamed Ismail

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

WEB COPY

ORDER

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

The Petitioner, father of the detenu Doss @ Arokkiadoss, S/o.Pathiyanathan, aged about 47 years, challenges the impugned order of detention, in Cr.M.P.No.17/Bootlegger/2017, dated 11.12.2017 detaining his 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 11.11.2017; whereas the Detention order was passed on 11.12.2017, i.e., with an inordinate delay of more than 30 days.

4. Further, though the bail application filed by the detenu in Crime No.564 of 2017 was allowed, 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 detenu obtained bail in Crime No.564 of 2017, 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 is filed by the detenu in Crime No.713 of 2017, 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 11.11.2017; whereas the detention order was passed on 11.12.2017 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 22.12.2017. 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 in Cr.M.P.No.17/Bootlegger/2017, dated 11.12.2017, passed by the first respondent is set aside. The detenu, namely, Doss @ Arokkiadoss, S/o.Pathiyanathan, aged about 47 years, is directed to be released forthwith unless his

detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

vrc

To:

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

KS (CO)
GN (03/04/2018)

सत्यमेव जयते

H.C.P.No.2446 of 2017

WEB COPY