

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2469/2017

Kumari

... Petitioner

-vs-

1.The State of Tamilnadu
rep.by the Secretary, Home
Prohibition and Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
The Commissioner office
Vepery, Chennai 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.715/BCDFGISSSV/2017 dated 14.11.2017 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Jayaseelan, son of Kuppusamy, aged about 26 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Jayaseelan, son of Kuppusamy, aged about 26 years the detenu herein at liberty.

For Petitioner : Mr.E.Jaishankar

For Respondents: Mr.R.Prathap Kumar, APP

ORDER

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

Petitioner, wife of detenu, namely, Jayaseelan, son of Kuppusamy, aged 26 years, challenges the impugned order of detention, dated 14.11.2017 in Memo No.715/BCDFGISSSV/2017, detaining her husband 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 As per the grounds of detention dated 14.11.2017, passed by the second respondent, the detenu came to adverse notice in the following cases:

Adverse Case:

S1 No.	Name of the Police station and Crime No.	Section of law
1	N2 Kasimedu PS Cr.No.1327/2017	457, 380 IPC read with 34 IPC
2	N2 Kasimedu PS Cr.No.1348/2017	457, 380 IPC read with 34 IPC

Ground Case:

S1 No.	Name of the Police station and Crime No.	Section of law
1	N2 Kasimedu PS Cr.No.1403/2017	341, 323, 397, 336, 427 & 506[ii] IPC

3 The 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 further submit that the Detaining Authority has not satisfied himself as to the real possibility of the detenu coming out on bail in the adverse cases as well as in the ground case as the detenu has not filed any bail applications in the adverse cases and the bail petition filed by the detenu in the ground case was dismissed and no further bail application was filed by him. Further, it is contended that the detenu was arrested in the ground case on 21.09.2017 ; whereas the detention order came to be passed only on 14.11.2017, after a lapse of more than 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). Hence, 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 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.

6 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 real possibility of the detenu coming out on bail in the ground case as well as in the adverse cases. Admittedly, at the time of passing the Detention Order, no bail application was filed in the adverse cases in Cr.Nos.1327 and 1348/2017 and the bail application filed by the detenu in the ground case [Cr.No.1403/2017] before the learned Principal Sessions Judge, Chennai in CrI.MP.No.17523/2017 was dismissed and he has not filed any further bail application in the ground case. 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 based 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. When no bail application is filed, the logical conclusion would be that there is no likelihood of the detenu 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 ; but passed, based on mere ipsi dixit. Therefore, on this ground, the detention order is liable to be set aside.

7 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 14.11.2017 ; 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 21.09.2017. This shows an inordinate delay of nearly more than 1 ½ 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....."

8 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.

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 VII)

//True copy//

Sub Assistant Registrar

AP

To

1. The Secretary,
State of Tamilnadu, Home,
Prohibition and Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
The Commissioner office
Vepery, Chennai 600 007.

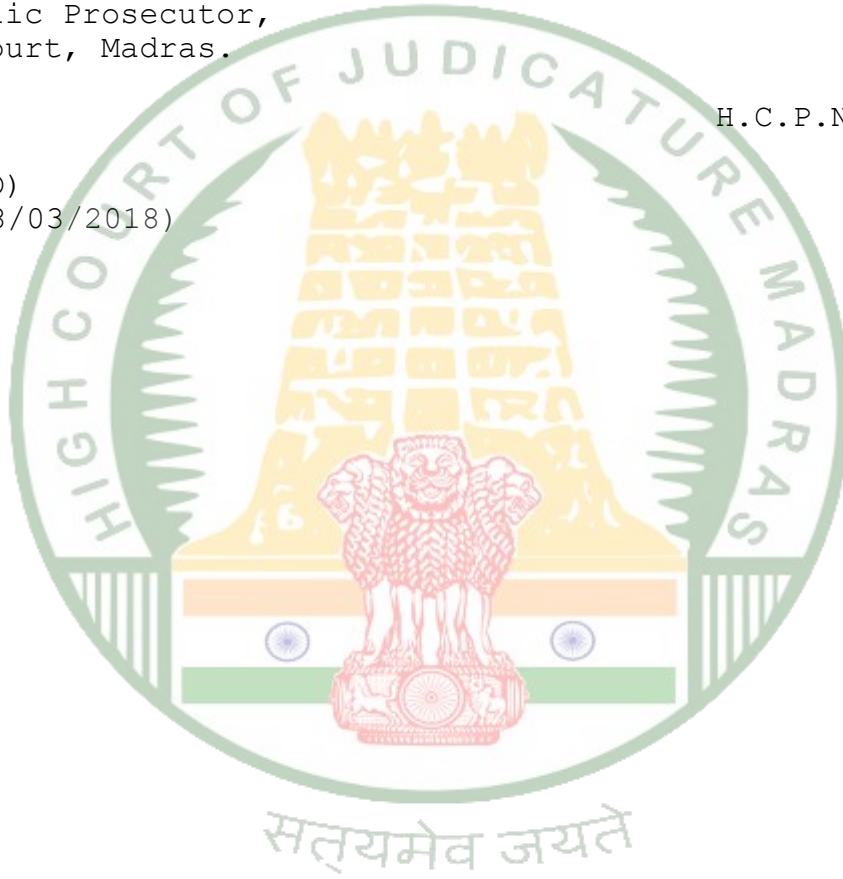
3.The Superintendent of Prisons
Central Prison, Puzhal, Chennai.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort ST.George, Chennai.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2469/2017

RJ(CO)
GN(28/03/2018)



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