

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2482 of 2017

Kanimozhi

... Petitioner

-vs-

1. State of Tamil Nadu
Rep. by The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St George, Chennai 600 009.

2. The Commissioner of Police,
Chennai Police, Vepery,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed in No.756/BCDFGISSV/2017 dated 04.12.2017 passed by the second respondent and set aside the same and directing the respondents to produce the petitioner's husband by name Sanjaikumar @ Sanjai Son of Saravanan @ Pady Saravanan aged about 27 years before this Court now confined in Central Prison, Puzhal, Chennai, set him at liberty.

For Petitioner : Mr.K.Thenrajan

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

ORDER

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

The Petitioner, wife of the detenu Sanjaikumar @ Sanjai Son of Saravanan @ Pady Saravanan aged about 27 years, challenges the impugned order of detention, in No.756/BCDFGISSV/2017 dated 04.12.2017 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 30.09.2017; whereas the Detention order was passed on 04.12.2017, i.e., with an inordinate delay of more than 40 days.

4. Further, the detenu has not filed any bail application either in the ground case or in the adverse case. As the petitioner was granted bail in a similar case in Crime No.656 of 2016, the detaining authority taking note of the said fact, came to the conclusion that there is likelihood of the detenu being released on bail in other cases also. Whereas, the likelihood of the detenu coming out on bail is very remote. When no bail application filed by the detenu either in ground case or adverse cases, 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 30.09.2017; whereas the detention order was passed on 04.12.2017 i.e., after more than 40 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 28.12.2017. 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 No.756/BCDFGISSV/2017 dated 04.12.2017, passed by the second respondent is set aside. The detenu, namely, Sanjaikumar @ Sanjai Son of Saravanan @ Pady Saravanan aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

vrc
To:

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

GP(CO)
SP(05/04/2018)

H.C.P.No.2482 of 2017



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