

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2018

Coram

THE HON'BLE MR.JUSTICE M.VENUGOPAL
&
THE HON'BLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.74 of 2018

R.Kokila

... Petitioner

vs.

1. The Secretary to Government of Tamil Nadu
Home, Prohibition & Excise Departmental
Fort St. George
Chennai - 600 009.
 2. The District Magistrate and District Collector
Namakkal District
Namakkal
 3. The Inspector of Police
Namagiripettai Police Station
Salem District
- ... 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 2nd Respondent in C.M.P.No.18/Goonda/2017/M1, dated 18.12.2017, to quash the same as illegal, unconstitutional and direct the Respondents to produce the detenu Vetri @ Edappadi Selvam @ Selvam son of Rajendiran, aged about 26 years, who is now detained in the Central Prison, Salem and set him at liberty from detention. सत्यमेव जयते

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.R.Ravichandran

Addl. Public Prosecutor.

O R D E R

(Order of the Court was made by M.VENUGOPAL, J)

Heard the Learned Counsel for the Petitioner and Learned Additional Public Prosecutor for the Respondents 1 to 3. No counter is filed.

2. It transpires that the Detention Order in C.M.P.No.18/Goonda/2017/M1, dated 18.12.2017 was passed by the Learned District Magistrate and District Collector, Namakkial District, against the Petitioner's son Vetri @ Edappadi Selvam @ Selvam, aged 26, Son of Mr.Rajendiran, Mettu Street, Edappadi, Salem District, a "Goonda" as contemplated under section 2(f) of the Tamil Nadu Act 14 of 1982. As a matter of fact, the Detention Order of the 2nd respondent dated 18.12.2017 points out that the Petitioner's son Vetri @ Edappadi Selvam @ Selvam was found indulging in activities prejudicial to the maintenance of Public Peace and accordingly, he was ordered to be detained at Central Prison, Salem.

3. According to the Petitioner, she is the mother of detenu Vetri @ Edappadi Selvam @ Selvam, Son of Rajendiran, aged about 26 years, and has filed the present Writ of Habeas Corpus seeking to quash the order of the 2nd respondent in C.M.P.No.18/Goonda/2017/M1, dated 18.12.2017 and to set her son at liberty from Detention (Currently detained in Central Prison, Salem).

4. The Learned Counsel for the Petitioner submits that in the instant case the ground of Detention Order was passed by the 2nd Respondent/Detaining Authority on 18.12.2017 and a representation dated 21.12.2017 was addressed by the Petitioner (mother of the detenu) to the Chairman of the Advisory Board, Chennai-1 and till date, the said representation has not yet disposed of by the appropriate Authority. Further, there is a delay of 104 days in considering the representation of the Petitioner, which is unexplained on the side of the Respondents 1 to 3.

5. The Learned Counsel strenuously projects the arguments that since the Advisory Board/Detaining Authority had not considered the Petitioner's representation dated 21.12.2017, the valuable right to fair opportunity of the detenu, projected under Article 22(5) of the Constitution of India and T.N. Act 14 of 1982 have been violated.

6. In substance, the stand of the Petitioner is that under the guise of Detention Order, the detenu cannot be illegally detained for an indefinite period.

7. The Learned Counsel for the Petitioner contends that the Detaining Authority in the Detention Order at Paragraph 3 had observed as follows:-

"3. I am aware that Thiru.Vetri @ Edappadi Selvam @ Selvam was remanded upto 29.11.2017 as per the order of the Judicial Magistrate, Rasipuram and lodged in Central Prison, Salem for

Namagiripettai Police Station Cr.No.458/2017 u/s 395 r/w 397 IPC. His remand period has been extended upto 29.12.2017. He has not filed bail application so far. Even though he is not filing bail applications, his relatives takes steps to file bail application before the appropriate court. In a similar case registered at Elachipalayam Police Station Cr.No.66/2017, u/s.394 r/w 397 IPC bail was granted to the accused in Crl.No.9421 on 01.06.2017 by the High Court of Madras. Hence there is a real possibility of Thiru.Vetri @ Edappadi Selvam @ Selvam coming out on bail in this case also. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of Public Peace. "

and therefore, a plea is taken on behalf of the Petitioner that the averment of the Detaining Authority inter alia to the effect that 'In a similar case registered at Elachipalayam Police Station Cr.No.66/2017, u/s.394 r/w 397 IPC bail was granted to the accused in Crl.No.9421 on 01.06.2017 by this Court' and this observation by the Authority concerned is not a sufficient ground to pass an Order of Detention mechanically without there being an application of mind to the facts involved in the ground case and other cases.

8. Also, the Learned Counsel for the Petitioner proceeds to point out that in the instant case there is no material to substantiate that there is a real possibility of detenu coming out of bail and therefore, the Order of Detention dated 18.12.2017 passed by the 2nd Respondent in C.M.P.No.18/Goonda/2017/M1, dated 18.12.2017 stands vitiated.

9. Per contra, Learned Additional Public Prosecutor, appearing for the Respondents 1 to 3 submits that the representation of the Petitioner dated 21.12.2017 is still under consideration.

10. At the out set, this Court aptly points out that the purpose of the Act 14 of 1982 is to prevent a person from indulging in any activities mentioned in the Act. In short, the Preventive Detention is not a punitive one and also it is not an alternative to criminal trial under the law. Moreover, the Act 14 of 1982 does not empower the Authority to punish a person without trial.

11. It cannot be ignored that a mere inference of possibility of the detenu coming out on bail without any cogent materials is not subjective satisfaction in the considered opinion of the Court.

12. It is to be noted that Section 8 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) confers the right on the detenu an opportunity to make a representation against the Order of Detention to the State Government. Furthermore, in the decision *Veeramani v. Commissioner and Secretary to Government* reported in 1990 MLJ (Cr) 147, it is observed that the representation given by the detenu was not considered by the person empowered to act on behalf of the Government and hence, it is held that the Detention Order is void.

13. It cannot be brushed aside that the Advisory Board has been established under Article 22 of the Constitution of India to see whether there is any reason for detention. Undoubtedly, the Advisory Board has a guarantee against the malicious or baseless detention. The Advisory Board is to offer its opinion, viz., statement containing reasons justifying orders of detention or not approving the order of detention. The said statement of the Advisory Board is neither a Judgment nor an Order but, only an opinion expressed by the Board. Indeed, a Court of law cannot confirm the Order of Detention solely on the basis of report of the Advisory Board. In reality, it should be independently considered by the available materials and a conclusion can be arrived at dehors the opinion of Advisory Board.

14. Any representation made to the competent authority, viz., the State Government or the Central Government is to take up the same immediately and the disposal must not be delayed either due to undue protraction, callousness, negligence, etc.

15. It is to be pointed out that the representations given pursuant to the Detention Order within 12 days to the Detaining Authority and the State Government, Advisory Board, by the Petitioner-mother of detenu, is not yet decided by the Detaining Authority, the State Government and the Advisory Board. In this connection, this Court pertinently points out that Article 22(5) of the Constitution reads as under:-

"22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

16. Considering the fact that the Impugned Order of

Detention only remains in force for 12 days and this Court taking note of a primordial fact that there is no approval of Detention Order dated 18.12.2017 from the State Government was obtained and communicated to the detenu after a lapse of 12 days, the detenu cannot be illegally detained and even he may not be restrained from taking part in the trial.

17. Viewed in that perspective, the candid fact that the representation of the Petitioner (mother of detenu), even after a lapse of 104 days, is still reportedly under consideration and no satisfactory or plausible reason/explanation is offered on the side of the Respondents, as to why for nearly 104 days the representation of the Petitioner dated 21.12.2017 is not yet considered and disposed of and also that no approval of Detention Order dated 18.12.2017 from the State Government was obtained, this Court is left with no other option, but, is inclined to allow the Writ of Habeas Corpus filed by the Petitioner because of the reason the same is void one in the eye of Law thereby, quashing the order passed by the 2nd Respondent in C.M.P.No.18/Goonda/2017/M1, dated 18.12.2017. Added further, this Court directs the detenu Vetri @ Edappadi Selvam @ Selvam, to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

Rj

To

1. The Secretary to Government of Tamil Nadu
Home, Prohibition & Excise Departmental
Fort St. George
Chennai - 600 009.
2. The District Magistrate and District Collector
Namakkal District
Namakkal
3. The Inspector of Police
Namagiripettai Police Station
Salem District
4. The Joint Secretary to government,
Public (Law and Order), Fort St.George,
Chennai.

5.The Superintendent
Central Prison, Salem.

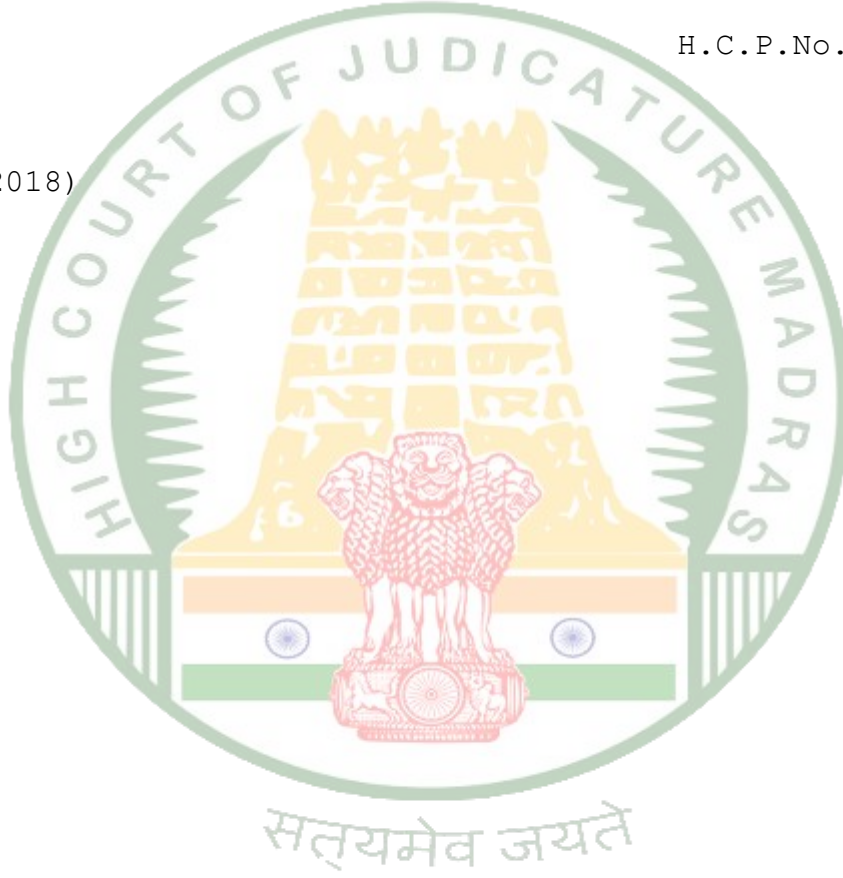
(in duplicate for communication to the detainee)

6.The Public Prosecutor,
Madras High Court, Chennai.

+lcc to Mr.S.Sathia Seelan, Advocate SR.No.24979

H.C.P.No.74 of 2018

SAI (CO)
GN(05/04/2018)



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