

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.82 of 2018

Sundaramoorthy

.... Petitioner

vs.

1.The State, rep.by its
Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009

2.The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to call for the records pertaining to detention order passed in S.C.No.57 of 2017, dated 5.9.2017, on the file of the second respondent and quash the same and direct the respondents to produce the body of the petitioner namely Sundaramoorthy, son of Srinivasan, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.S.Pushpakaran

For Respondents : Mr.Pratap Kumar
Additional Public Prosecutor

ORDER

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

Heard the Learned Counsel for the Petitioner and the Learned Additional Public Prosecutor for the Respondents 1 and 2.

2.The petitioner/Detenu, viz., has preferred the present Writ of Habeas Corpus Petition before this Court seeking to call for the records relating to the Detention Order dated 05.09.2017, passed in S.C.No.57 of 2017, by the Second Respondent/District Collector and District Magistrate,

Krishnagiri District.

3.It comes to be known that the Petitioner/Detenu, viz., Sundaramoorthy, is involved in the following adverse cases.

(i)Nagarasampatti Police Station, Crime No.65/2017 under Sections 457 and 380 of the Indian Penal Code;

(ii)Dharmapuri Police Station Crime No.484 of 2017 under Section 379 of the Indian Penal Code;

(iii)Nagarasampatti Police Station, Crime No.135/2017 under Sections 457 and 380 of the Indian Penal Code.

4.The Petitioner/Detenu, viz., Sundaramoorthy, is involved in the ground case in Crime No.136 of 2017, Nagarasampatti Police State, under Sections 392 and 506(ii) of the Indian Penal Code and the facts of the Ground Case are set out below:-

On 30.07.2017, at about 8.00 hrs, one Gangadharan, son of Gurunathan, residing at Marutheri Village, Nagarasampatti Post, Pochampalli Taluk, Krishnagiri District, along with two others, appeared before the Inspector of Police, Barur Circle at Barur Police Station, and produced the Detenu, viz., Sundaramoorthy with the amount of Rs.1000/- and a gold ring weighing about $\frac{3}{4}$ sovereign and also gave a written complaint. In the complaint, he has stated that he was residing at Marutheri village along with his family and he was an Ex-Serviceman. He was working as a Lab Assistant at Govt. High School, in Theertham. He has further stated in the complaint that on 30.07.2017, he went to Karimangalam to attend his personal work and when he was returning back to his house and came near Thatrahalli junction at about 7.00 a.m., one unknown person, aged about 25 years, gave signal to stop the vehicle. When he stopped his vehicle, the person took a knife from his Hip, placed it on his neck and by speaking in obscene / indecent words in Tamil rushed to cut over his head and demanded money from him and when he replied that he has no money, the person took Rs.1000/- from his pocket and also snatched his gold ring, weighing about $\frac{3}{4}$ sovereign from his hand. On hearing the hue and cry raised by the complainant, the nearby shop keepers closed their shops and ran away with fear. However, the complainant and his associates chased and caught the person and enquired him. The person revealed his name as Sundaramoorthy of Soppanur Village. The said Gangadharan came to the Police Station and produced the above

said person along with the robbed amount, gold ring and knife. He lodged a complaint against the Detenu, Sundaramoorthy before the Nagarasampatti Police Station and a case was registered in Crime No.136 of 2017 for offences under Sections 392 and 506(ii) of the Indian Penal Code. Further, the Accused in his confession statement had admitted his involvement in Crime No.136 of 2017 on the file of Nagarasampatti Police Station.

5.The Learned Counsel for the Petitioner submits that the impugned order of Detention dated 05.09.2017 in S.C.No.57 of 2017, passed by the Second Respondent/District Collector and District Magistrate, Krishnagiri District, is against Law, Evidence, Fairness and as such, the same is liable to be quashed, in the interest of justice.

6.The Learned Counsel for the Petitioner contends that there is an unexplained delay of 44 days [after excluding 19 days holidays (i.e. 63 days - 19 days = 44 days)] in considering the Petitioner's/Detenu's first representation dated 10.10.2017 and as such, the liberty of the Petitioner is violated.

7.It is the submission of the Learned Counsel for the petitioner that the Second Representation of the Petitioner dated 13.11.2017, was considered with an inordinate delay of 111 days and excluding the 37 days holidays, in fact, there is a delay of 74 days in considering the Second Representation of the petitioner. As a matter of fact, the first representation dated 10.10.2017 was rejected on 18.12.2018 and a rejection letter was dispatched to the Petitioner/Detenu on 19.12.2018. Likewise, the Second Representation of the Petitioner dated 13.11.2017 was rejected on 12.03.2018 and a rejection letter was transmitted to the Petitioner/Detenu on 13.03.2018.

8.It is an axiomatic principle of law that the representation(s) of the Petitioner/Detenu in respect of preventive detention is/are to be disposed of by the concerned authority with diligence and diligence and alacrity and there shall be no slackness or undue delay in this regard, because of the reason that it violates the liberty of a person enshrined under Article 22 of the Constitution of India.

9.The Learned Counsel for the Petitioner contends that in the Detention Order, the remand date was wrongly mentioned as 04.09.2017, in fact, the remand was extended on 01.09.2017 till 15.09.2017. In fact, the remand extension order in the Book-let shows that nowhere the date is mentioned as 04.09.2017. In this regard, the Learned Additional Public Prosecutor appearing for the Respondents submits that there appears to be a typographical error in regard to the date being mentioned as the one for extension of Remand.

10.The Learned Counsel for the petitioner comes out with a plea that in Paragraph No.4 of the Detention Order, the Second Respondent/District Collector and District Magistrate, Krishnagiri District, had stated that "I am aware that Thiru Sundaramoorthy was produced before the District Munsif cum Judicial Magistrate, Pochampalli, on 30.07.2017h in Barur Police Station Crime No.136 of 2017, u/s.392, 506(ii) IPC, remanded to Judicial custody and lodged at the Central Prison, Salem, as a remand prisoner till 10.08.2017. His remand has been extended upto 04.09.2017. He has filed a bail application for the above said case in District Munsif cum Judicial Magistrate, Pochampalli, vide Crl.M.P.No.2819/2017 and same is pending. I am also aware that in a similar case, registered against an accused by name Thiru Rsukutti @ Venkatesan in Harur Police Station Crime No.482/2014, u/s.392 r/w.397, bail was granted to him by the Principal Sessions District Court, Dharmapuri, vide Crl.M.P.No.2534/2014, dated 25.08.2014. Hence, I infer that it is very likely of his (Thiru Sundaramoorthy) coming out on bail for the above said case, since bails are granted by the Courts in such cases. If he (Thiru Sundaramoorthy) comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order. On the materials placed before me, I am satisfied that the said Thiru Sundaramoorthy is a 'Goonda' who indulged in activities prejudicial to the maintenance of public peace and public order and there is a compelling necessity to detain him under the provisions of the Tamil Nadu Act 14 of 1982, in order to prevent him from indulging in such activities which are prejudicial to the maintenance of public order."

11.In this regard, it is the plea of the Petitioner that bail granted to the accused, viz., Rasukutti @ Venkatesan in Harur Police Station Crime No.482 of 2014, under Section 392 read with 397 of IPC, as per order dated 25.08.2014, in Crl.M.P.No.2534 of 2014, has nothing to do with the Petitioner and the observation of the Second Respondent that it is very likely that the Petitioner (Thiru Sundaramoorthy) coming out on bail, since bails are granted by the Courts in such cases, is unwarranted in Law.

12.The prime stand of the Petitioner is that there appears to be a non-application of mind while making the aforesaid observation to the effect that the Petitioner is very likely to come out on bail for the case in question and the said observation is baseless, unsound and to lend support to his contention, a heavy reliance is placed on the decision of this Court between Prasanna Kumar vs. State, rep.by the Secretary to Government, Co-operation Food and Consumer Protection

Department, Secretariat, Chennai-600 009 and Others, reported in (2015) 1 MLJ (Cr1) 385, wherein it is observed and held as under:

"5.A perusal of the impugned detention order would go to show that in paragraph No.5 of the Grounds of Detention, while referring to about the three adverse cases against the petitioner, it is stated that the petitioner has obtained anticipatory bail in first Crime; however other two adverse cases were omitted to be mentioned by the detaining authority. There is no mention in the detention order as to whether any step was taken to move bail application in other two adverse cases. In the absence of any particulars in this regard and any material to show that the detenu is likely to come out on bail in other two cases, the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu in coming out on bail, is baseless and unfounded and is on total non application of mind, as such, the same stands vitiated.

In the facts and circumstances of the present case, non-mentioning of the other two adverse cases against the detenu has the effect of vitiating the impugned detention order. Further, due to such failure, when bail applications are moved in the other two cases, there is no imminent possibility of the detenu coming out on bail and thereby, he has lost his valuable right."

13.The Learned Counsel for the Petitioner also brings to the notice of this Court that the Petitioner has filed bail application in Cr1.M.P.No.2819 of 2017 in Crime No.136 of 2017 under Sections 392 and 506(ii) IPC and the same is pending. Also the Petitioner has filed Cr1.M.P.No.2820 of 2017 in Crime No.135 of 2017 and that is also pending.

14.Per contra, it is the submission of the Learned Additional Public Prosecutor that the Petitioner/Detenu is involved in Nagarasampatti Police Station in Crime No.65 of 2017 under Sections 457 and 380 of IPC and also in Dharmapuri Police Station Crime No.484 of 2017 under Section 379 IPC and in the ground case of Nagarasampatti Police Station in Crime No.136 of 2017 under Section 392 and 506(ii) of IPC. It is represented on behalf of the Respondents that considering the gravity of offences and resting upon the genuiness of the documents

produced by the Sponsoring Authority, the order of Detention was passed by the Second Respondent on 05.09.2017 and in short, the order of Detention so passed is in accordance with Law and there is no infirmity in this regard, because of the reason that there is no violation of liberty of the Petitioner under Articles 21 and 22 of the Constitution of India.

15.The Learned Additional Public Prosecutor for the Respondents contends that the impugned order of Detention dated 05.09.2017 was passed by the Second Respondent after full application of mind and contra plea taken on behalf of the Petitioner is not correct.

16.As far as the first representation of the Petitioner/Detenu dated 10.10.2017 is concerned, admittedly there is a delay of 44 days (63-19 days holidays) and no plausible explanation is offered on behalf of the Respondents for the delay of 44 days in considering the first representation.

17.Coming to the aspect of second representation of the Petitioner/Detenu dated 13.11.2017, wherein also there is a delay of 74 days (111 days - 37 days holidays). Here also there is no convincing explanation on the side of the Respondents. On the ground of unexplained delay in considering the two representations, as aforesaid, which had caused prejudice to the Petitioner, this Court is of the considered view that the Detention Order dated 05.09.2017 passed by the 2nd Respondent is fatal and the same stands vitiated. Accordingly, this Court sets aside the order of Detention dated 05.09.2017, infurtherence of substantial cause of justice.

18.In fact, the likelihood of Detenu being released on bail ought to be drawn from the materials available on record. In the absence of such materials mere Ipse Dixit of Detaining Authority is not sufficient to sustain the order of Detention as per decision of the Hon'ble Supreme Court in A.Shanthi V. Government of Tamil Nadu and Others (2006) 9 SCC 711. Moreover, 'Conjecture' cannot form the basis of Detention under the Act as per decision of this Court in Muthiah Muthusamy V. The State of Tamil Nadu and another 1991 MLJ (Crl) 607.

19.The Detaining Authority should be satisfied on the basis of available cogent material about likelihood of the Detenu being released on bail and not merely the likelihood of his moving Bail Petition/ Application as per decision of the Hon'ble Supreme Court in AmritLal V. Union of Government of India (2001) 1 Supreme Court Cases 341.

20.It is to be pointed out that the aim of preventive detention is that no person acted against National interest

escapes from the clutches of Law. However, the Law should be construed strictly as per decision of the Hon'ble Supreme Court in Ahamed Nassar V. State of Tamil Nadu and Others reported in (1999) 8 Supreme Court Cases 473.

21.As a matter of fact, fundamental rights available to a Detenu are to be enforced strictly notwithstanding the activities of Detenu as per decision of the Hon'ble Supreme Court in Kamaleshkumar IshwarDas Patel V. Union of India and Others reported in (1995) 4 Supreme Court Cases 51.

22.In so far as the pending two bail applications as referred to supra in Crl.M.P.No.2819 of 2017 in Crime No.136 of 2017 under Sections 392 and 506(ii) IPC and Crl.M.P.No.2820 of 2017 in Crime No.135 of 2018, under Sections 457 and 380 IPC, this Court is of the earnest opinion that it is the right of an Accused in Criminal Law to file bail application and just because in another case, a bail was granted to a different accused in different crime number, the same cannot be a yardstick for coming to the conclusion 'that the Petitioner is very likely to come out on bail, since bails are granted by the Courts in such cases'. This observation of the Second Respondent/Detaining authority in the detention order is not a sound one and also the same being a baseless and unwarranted one because of the reason that there is an absence of any material particulars in this regard.

23.In regard to the date of remand extension, viz, 4.9.2017, as mentioned in paragraph No.4 of the Detention Order, the same, according to the Respondents, is a typographical mistake and in fact, on 01.09.2017, the remand of the Petitioner was extended till 15.09.2017 by the Learned District Munsif-cum-Judicial Magistrate, Pochampalli.

24.This creeping in of error, namely, describing the wrong date, viz., 04.09.2017 and till such time the remand was extended, cannot in any way be helpful to the Petitioner, since, the typographical/inadvertent error in mentioning the exact extension of date of remand as 04.09.2017, instead of 15.09.2017 can be ignored, since 'to err is human'.

25.In the light of the foregoing detailed discussions and also considering the facts and circumstances of the present case, as stated supra, this Court comes to an inevitable conclusion that the Detention order dated 05.09.2017 suffers from non-application of mind and also because of the fact that there was an inordinate and unexplained delay of 44 days in considering the first representation of the Petitioner/Detenu, dated 10.10.2017 and also 74 days delay in considering the second representation of the Petitioner/Detenu, dated 13.11.2017, this Court interferes with the detention order dated

05.09.2017 and sets aside the same.

In fine this Habeas Corpus Petition is allowed. The detention order dated 05.09.2017, passed in S.C.No.57 of 2017, by the Second Respondent/Detaining Duthority against the detenu, viz., Sundaramoorthy, aged 23 years, son of Seenivasan, residing at Soppanur Village, Thatrahalli Post, Krishnagiri Taluk, Krishnagiri District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009
- 2.The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Madras
- 5.The Joint Secretary to Government Public Law and order
Fort St.George Chennai 09

+1 cc to Mr.S.Pushpakaran Advocate sr 34513

H.C.P.No.82 of 2018

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