

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

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

H.C.P.No.84 of 2018

Sundar Raj

.... Petitioner

vs.

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

2.The Commissioner of Police,
Chennai City Police,
Office of the Commissioner of Police,
Vepery, Chennai-600 007

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to call for the records relating to the detention order vide memo No.738/BCDFGISSSV/2017, dated 21.11.2017, passed by the second respondent and set aside the same and direct the respondent to produce the body of the detenu Kalai Selvan, Son of Sundar Raj, aged about 23 years, now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.P.Rajkumar Pandian

For Respondents : Mr.R.Ravichandran
Government Advocate (Crl.side)

ORDER

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

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate (Crl.Side) for the Respondents 1 and 2.

2.The petitioner/father of the Detenu, viz., Kalaiselvan, has preferred the present Writ of Habeas Corpus Petition before this Court seeking for a directing being issued for calling of

the records, pertaining to the detention order in No.738/BCDFGISSSV/2017, dated 21.11.2017, passed by the Second respondent and to set aside the same. Further, the Petitioner has sought for passing of an order by this Court in directing the Respondents to produce the body of the Detenu, viz., Kalaiselvan, aged about 23 years, now confined in Central Prison, Puzhal.

3.It comes to be known that the Petitioner's son/Detenu, viz., Kalaiselvan, is involved in the following two adverse cases.

(i)P-3 Vyasarpadi Police Station, Crime No.18/2016 under Section 307 of the Indian Penal Code altered into one under Section 302 of the Indian Penal Code;

(ii)Sholavaram Police Station Crime No.521 of 2017 under Sections 147, 148, 452 and 302 of the Indian Penal Code.

4.The Petitioner's son/Detenu, viz., Kalaiselvan, is involved in the ground case in Crime No.1522 of 2017, P-5 M.K.B.Nagar Police State, under Sections 341, 294(b), 323, 336, 392, 397 and 506(ii) of the Indian Penal Code read with Section 3 of TNPPDL Act and the facts of the ground case are narrated as under:-

On 30.10.2017, at about 9.00 hrs, the Detenu, Kalaiselvan along with two others had entered into the mobile tiffin shop run by one Salaman, residing at No.14, A-Block, Pudhu Nagar, Vyasarpadi, Chennai-38. They ordered to make parcel of some tiffin items and while were about to leave the tiffin shop, after taking the parcel, but without making payment, their act was questioned by the said Salaman and the Detenu, viz., Kalaiselvan slapped him over his cheek and also took the knife kept with him and by speaking in obscene / indecent words in Tamil rushed to cut over his head, but the said Salaman escaped from the attack. On hearing the hue and cry raised by the said Salaman, the nearby shop keepers and the public rushed to apprehend the accused. However, the Detenu and his associates, apprehended Salaman and assaulted him with stones from the road and pelted the same over the public, as a result of the same, the public and the customers, who were taking tiffin in the complainant's shop, ran away on all directions out of fear. Taking advantage of the panic situation, a sum of Rs.1200/- was taken by them from the cash box etc., Subsequently, Salaman / Complainant lodged a complaint against the Detenu, Kalaiselvan before the P5 M.K.B.Nagar Police Station and a case was registered in Crime No.1522 of 2017 for offences under Sections 341, 294(b), 323, 336, 392, 397 and 506(ii) of the Indian Penal Code read with Section 3 of TNPPDL Act. Further, all the accused [including

the Petitioner's son Kalaiselvan] in their confession statements had admitted their involvement in Crime No.1522 of 2017 on the file of P-5 M.K.B.Nagar Police Station.

5.The Learned Counsel for the Petitioner submits that the Detention Order dated 21.11.2017, passed by the Second Respondent/Detaining Authority is a mala fide, ab initio and void one because of the reason that the Detenu, viz., Kalaiselvan had filed Bail Application in CrI.M.P.No.17601 of 2017, before the Principal Sessions Judge, Chennai, in respect of the ground case in Crime No.1522 of 2017, on the file of the P-5 M.K.B.Nagar Police Station and in fact, the said Bail Application was dismissed by the Principal Sessions Judge, on 15.11.2017; but the Second Respondent/Detaining Authority, in the order of Detention dated 21.11.2017, at Paragraph No.4, had stated among other things that the Detenu, viz., Kalaiselvan, had filed a Bail Application in CrI.M.P.No.17601 of 2017, before the Court of Principal Sessions Judge, Chennai, and the same was pending. In this connection, the Learned Counsel for the Petitioner forcibly contends that when the Bail Application in CrI.M.P.No.17601 of 2017 was dismissed by the Learned Principal Sessions Judge, Chennai, on 15.11.2015, there is no possibility for the Detenu to come out on bail and in short, the Second Respondent/Detaining Authority has passed the impugned order of Detention dated 21.11.2017, in a mechanical form, without there being an application of mind.

6.The Learned Counsel for the Petitioner brings it to the notice of this Court that in the Police Remand Order, found at Page Nos.88 and 89 of the Book-let, served along with the grounds of detention, it was mentioned that a case in Crime No.528 of 2017 was registered against the Detenu in Chozhavaram Police Station on 07.07.2017, however, no materials were supplied to the Detenu in respect of the said case and also that no documents were placed before the Detaining Authority.

7.The Learned Counsel for the Petitioner submits that there was a delay of 14 days in considering the representation of the Petitioner dated 15.12.2017 and hence, on that score also, the Detention order dated 21.11.2017 is liable to be set aside.

8.Per contra, it is the submission of the Learned Government Advocate (CrI.Side) for the Respondents that the involvement of the Petitioner's son Kalaiselvan (Detenu) in two murder cases came to the adverse notice of the authorities during the year 2016 and 2017 and in the ground case (robbery case), which was registered on 30.10.2017, the detenu, Kalaiselvan and his associates had acted in a manner prejudicial to the maintenance of public order and to prevent the detenu from indulging in such criminal activities, the Second

Respondent/Detaining Authority had passed the detention Order dated 21.11.2017.

9.The Learned Government Advocate (Crl.Side) for R1 and R2 proceeds to point out that the representation of the petitioner (father of the Detenu) dated 15.12.2017 was received by the Government on 19.12.2017 and immediately the remarks were called for from the concerned authority on 19.12.2017 and further that on 26.12.2017, the remarks were received and that the file was submitted to the Under Secretary to the Government of Tamil Nadu on 27.12.2017, which was dealt with by the said Secretary on 27.12.2017. Furthermore, the Deputy Secretary to the Government dealt with the file on 27.12.2017 and that the Hon'ble Minister for Electricity and Prohibition and Excise of Government of Tamil Nadu dealt with the file on 12.01.2018 and the Letter of rejection was prepared on 12.01.2018 and that the rejection Letter was sent to the Detenu on 12.1.2018.

10.Added further, the Learned Government Advocate (Crl.Side) for the Respondents brings it to the notice of this Court that there were Government holidays on 23.12.2017 to 25.12.2017, 30.12.2017, 31.12.2017, 01.01.2018, 06.01.2018, 07.01.2018 and in fact, there is no delay in the representation of the Petitioner (father of the Detenu), dated 15.12.2017, being considered by the concerned authorities.

11.In regard to the plea taken on behalf of the Petitioner in respect of Crl.M.P.No.17601 of 2017, the Learned Government Advocate (Crl.Side) contends that the Detaining Authority raised his apprehension in the grounds of Detention and as such, the same cannot be taken advantage of by the Court.

12.The Learned Government Advocate (Crl.Side) contends that in Crime No.521 of 2017, on the file of E5 Chozhavaram Police Station, a case was registered under Sections 147, 148, 452 and 302 of the Indian Penal Code, on receipt of complaint from one Swarnamugi on 05.07.2017 (not in Crime No.528 of 2017, as averred by the Petitioner in the grounds of Habeas Corpus Petition) and in fact, the documents were furnished to the Detenu for information, in the Book-let at Page Nos.88 and 89.

13.The Learned Government Advocate (Crl.Side) for the Petitioner brings it to the notice of this Court that the documents found at page Nos.136 and 137 of the Book-let are FIRs in similar cases in B5, M.K.B Nagar Police Station, Vyasarpadi, Chennai and the same are legible one.

14.In short, the plea of the Respondents is that the Second Respondent/Detaining Authority, after making his own independent assessment of the relevant materials against the Detenu and after arriving at a subjective satisfaction, had passed the order of Detention in accordance with law and as

such, the present Habeas Corpus Petition filed by the Petitioner is liable to be dismissed by this Court.

15. Dealing with the aspect of delay of 14 days in considering the representation of the Petitioner (Detenu's father dated 15.12.2017), this Court points out that strictly speaking only 11 days there appears to be delay in considering the representation of the Petitioner and although, a strenuous plea is taken on behalf of the Respondents that the delay is only of shorter duration, this Court is not inclined to accept the same, because of the simple reason that the ingredients of Article 22(5) of the Constitution of India are sacrosanct and also that the personal liberty of a person is affected by virtue of detention order being passed by the Second Respondent in so far as the Detenu, Kalaiselvan, is concerned. Article 21 of the Constitution of India has a relevance and the same assumes primordial importance as soon as when a person is arrested or detained and it remains pertinent so long as he is subject to criminal prosecution/detention that has resulted or might result in deprivation of his personal liberty. Apart from that, an administrative reason for the delay of 11 days is also attributed on behalf of the Respondents, however, this Court is not inclined to accept the same. In short, this Court opines that in any event, the delay of 11 days in considering the representation of the Petitioner (father of the Detenu) has not been explained to the subjective satisfaction of this Court on the part of the Respondents and on this score, the impugned order of Detention is liable to be set aside, in the interest of justice.

16. So far as the reference being made to the Criminal M.P.No.17601 of 2017 by the Detaining Authority, at Paragraph No.4 of the Detention Order, dated 21.11.2017, this Court significantly points out that in the said Criminal Miscellaneous petition (in which the Detenu figured as first Petitioner along with another Sathish), necessary orders were passed, granting bail in so far as the Second Petitioner therein was concerned and in respect of the Detenu, viz., the First Petitioner in CrI.M.P.No.17601 of 2017, the same was dismissed by the Learned Principal Sessions Judge, Chennai, as early as on 15.11.2017. The observation of the Detaining authority at Paragraph No.4 of the detention Order that the said Criminal Miscellaneous Petition was pending, was not a correct one. Apart from that, a Special Report of the Inspector of Police, B5, M.K.B.Nagar Police Station, Chennai at Page No.173 of the Book-let, was dated 23.11.2017, as seen from the Book-let given to the Petitioner. However, the affidavit of the Sponsoring Authority/Inspector of Police (L & O), B5, M.K.B.Nagar Police Station, filed before the Second Respondent/Detaining Authority bears the date as 20.11.2017. In the affidavit of the Sponsoring Authority/Inspector of Police (L & O), B5,

M.K.B.Nagar Police Station, Chennai, the Bail Application in Crl.M.P.No.17601 of 2017 was stated to be pending, which is factually incorrect one, when the Learned Principal Sessions Judge, Chennai, has passed orders on 15.11.2017 in Crl.M.P.No.17601 of 2017, in respect of the Detenu, Kalaiselvan (first Petitioner therein) and another person/accused one Sathish.

17.Suffice it for this Court to point out that when the Bail Application No.17601 of 2017 was disposed of by the Learned Principal Sessions Judge, Chennai, as early as on 15.11.2017, then it passes beyond one's apprehension as to how the Sponsoring Authority, viz., The Inspector of Police, B5 M.K.B.Nagar Police Station, Chennai, as well as the Second Respondent/Detaining Authority had mentioned in the affidavit as well as in the Detention Order that Crl.M.P.No.17601 of 2017 was pending.

18.In this regard, this Court is of the earnest opinion that there appears to be a non-application of mind in regard to the factual aspect of the exact status of the Bail Application, filed by the Petitioner's son Kalaiselvan and another in Crl.M.P.No.17601 of 2017, on the file of the Principal Sessions Judge, Chennai.

19.Because of the non-application of mind in regard to the exact factual position of the status of Bail Application in Crl.M.P.No.17601 of 2017, this Court holds that the impugned order of detention is also liable to be quashed.

20.In regard to the plea taken by the Petitioner that the documents pertaining to Crime No.521 of 2017 (not Crime No.528 of 2017) were not furnished to the Detenu, it is to be pointed out that only such documents relied on by the Second Respondent/Detaining Authority are required to be furnished in law to the Detenu and the non supply of documents pertaining to the adverse case is not fatal.

21.In short, since the Respondents do rely only the ground case documents, and not the adverse case documents, this Court comes to a clear cut conclusion that the contra plea taken on behalf of the Petitioner to the effect that documents pertaining to the adverse case are to be furnished to the Detenu, is not countenanced in the eye of law.

22.Be that as it may, in view of the qualitative and quantitative discussions and also considering the fact that the delay of 11 days in considering the representation of the Petitioner (father of the Detenu) has not been explained to the subjective satisfaction of this Court and also that there was non-application of mind on the part of the Respondents in

regard to the exact factual position of the status of Bail Application in CrI.M.P.No.17601 of 2017, this Court, in the interest of justice and in furtherance of substantial cause of justice set asides the impugned order of Detention dated 21.11.2017 passed by the Second Respondent and resultantly, the present Habeas Corpus Petition succeeds.

In fine this Habeas Corpus Petition is allowed. The detention order dated 21.11.2017, passed in No.738/BCDFGISSSV/2017, by the Second Respondent/Detaining Duthority against the detenu, viz., Kalaiselvan, aged 23 years, son of Sundarraaj, residing at No.10, 10th Cross Street, Thiruvalluvar Nagar, Kodungaiyur, Chennai-600 118, 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.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary of Government
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009
- 2.The Commissioner of Police,
Chennai City Police,
Office of the Commissioner of Police,
Vepery, Chennai-600 007
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras
5. The Joint Secretary to Government
Public Law and order
Fort St. George
Chennai 9.

+1 CC to Mr.P. Rajkumar Pandian, advocate sr 31128.

H.C.P.No.84 of 2018

SP(26/04/2018)