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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

H.C.P(MD)No.616 of 2018

N.Jahir Hussain : Petitioner

Vs.

1.The Secretary to Government,
Government of India,
Ministry of Home Affairs (Internal Security),
North Block, New Delhi 110001.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Public (Law and Order)-F Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

3.The District Magistrate and District Collector,
Officer of the District Collector,
Ramanathapuram District.

4.The Deputy Superintendent of Police,
Keelakarai Sub Division,
Ramanathapuram District. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the respondent No.3 in Cr.M.P.No.02/NSA/2018, dated 12.04.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's son Abu Bakkar Siddiq, aged about 23 years, son of Jahir Hussain, now confined at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.M.A.Jinnah
For RR1 : Mr.K.Prabhu
Central Government Standing Counsel
For RR2 to 4 : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

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The petitioner is the father of the detenu - Abu Bakkar Siddiq, son of Jahir Hussain, aged about 23 years. The detenu has

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been detained by the third respondent by his order in Cr.M.P.No.02/NSA/2018, dated 12.04.2018, invoking the provisions of the National Security Act, 1980. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard Mr.S.M.A.Jinnah, learned counsel appearing for the petitioner, Mr.K.Prabhu, learned Central Government Standing Counsel for the first respondent and Mr.K.Chellapandian, learned Additional Advocate General, Assisted by Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents 2 to 4. We have also perused the records carefully.

3. Though several grounds have been raised assailing the impugned order of detention, the learned counsel appearing for the petitioner would mainly focus his argument that the Detaining Authority has recorded his subjective satisfaction that the ground case had been registered against the detenu by Keelakarai Police Station in Crime No.46 of 2018, for the offences under Sections 153 (A), 120-B of the Indian Penal Code, r/w Sections 15(c), 17, 18, 19, 20 of the Unlawful Activities (Prevention) Act 1967, r/w 25(1)(a) of the Indian Arms Act 1959. In the said case, the detenu filed a bail application, which was dismissed by the Sessions Court, Ramanathapuram, on 06.04.2018. The Detaining Authority has further stated that the detenu has filed yet another bail application, which was also dismissed by the Sessions Court, Ramanathapuram, on 11.04.2018. However, the Detaining Authority has stated that in a similar case registered by Kanyakumari District, Ethamozhi Police Station in Crime No.215 of 2014, for the offences under Sections 153 (A), 295(A) of the Indian Penal Code, the accused - Elankaviyarasan was granted bail. The comparison of those cases, according to the learned counsel for the petitioner, as similar cases for the expression of the subjective satisfaction is improper and the subjective satisfaction expressed by the Detaining Authority can be said to be the result of non-application of mind to the difference between the two cases.

4. We find force in the submission of the learned counsel for the petitioner that the subjective satisfaction of the detaining authority has been wrongly arrived at, as the ground case registered against the detenu is triable by Court of Sessions, whereas, the case informed to be similar is triable by a Magistrate. Further, in the ground case, Section 167(ii) of Cr.P.C., providing for mandatory release on bail, comes into play only on expiry of 180 days of arrest, whereas in the case informed to be similar, the same comes into play after 90 days of arrest. Hence, as righlty contended by the learned counsel for the petitioner, the comparison was not proper and it reveals non-application of mind on the part of the Detaining Authority. The subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case is based on inappropriate and insufficient materials. Hence, the order of detention is vitiated and liable to be set aside.

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5. In the result, the Detention Order, passed by the third respondent, in his proceedings in Cr.M.P.No.02/NSA/2018, dated 12.04.2018, is quashed. The detenu, namely, Abu Bakkar Siddiq, son of Jahir Hussain, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

6. In the upshot, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
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2.The Secretary to Government,
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3.The District Magistrate and District Collector,
Officer of the District Collector,
Ramanathapuram District.

4.The Deputy Superintendent of Police,
Keelakarai Sub Division,
Ramanathapuram District.

5.The Secretary to Government,
Home, Prohibition Excise Department,
Fort Saint George, Chennai-9.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

7.The Superintendent,
Central Prison, Madurai.

+1cc to Mr.S.M.A.Jinnah, Advocate, SR.No.70662.
+1cc to Mr.K.Prabhu, Advocate, SR.No.70783.

ORDER MADE IN
H.C.P(MD)No.616 of 2018
Dated:02.07.2018

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