



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**
AND
THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

H.C.P (MD) No.1274 of 2018

Kowsalya

.. Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison,
Tiruchirapalli.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in C.O.C.No.33/2018 dated 25.08.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Stalin S/o. Krishnamoorthy, male aged 37 years who is detained in Central Prison Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor.

**O R D E R**

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of the detenu. The detenu has been detained by the second respondent by his order in C.O.C.No. 33/2018 dated 25.08.2018, holding him to be a "Sand Offender", as contemplated under Section 2(gg) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

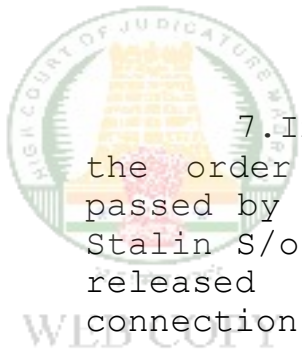
2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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.

4.The learned counsel appearing for the petitioner would submit that the detenu has filed bail petition in the ground case in CrI.M.P.No.2698 of 2018 and the same is pending before the Principal District and Sessions Court, Nagapattinam. While so, the detaining authority has arrived at a subjective satisfaction that there is real possibility of the detenu in coming out on bail, by filing another bail application in the above case before the same Court or High Court, which shows the non application of mind on the part of the detaining authority and hence he prays for quashment of the order of detention.

5.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6.Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the detention order. Admittedly, in the ground case the detenu has already filed bail application and the same is still pending. While so, the detaining authority has arrived at a subjective satisfaction that there is imminent possibility of the detenu in coming out on bail by filing another bail application in the above case before the same Court or High Court, which would clearly show the non application of mind on the part of the detaining authority in clamping the order of detention against the detenu. In such view of the matter, the detention order is liable to be set aside.



7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.O.C.No. 33/2018 dated 25.08.2018, passed by the second respondent is set aside. The detenu, namely, Stalin S/o.Krishnamoorthy, male, aged 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
3. The Superintendent,
Central Prison,
Tiruchirapalli.
4. The The Joint Secretary to Government,
Public (Law and Order),
Fort.Saint George, Chennai. 09.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.1274 of 2018
26.10.2018

mj

RAM-NM/SKN/SAR 1/04.12.2018/3P/6C