

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.NO.7 OF 2019

M.Sudha

..Petitioner

-Vs-

1. The Secretary of Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai-600 009.
 2. The Commissioner of Police/Detaining Authority
City Police Office, Coimbatore City,
Coimbatore-641 018.
- ..Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records, relating to the petitioner's father detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 26.11.2018 on the file of the 2nd respondent herein made in proceedings memo C.No.119/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's father namely P.Sakthivel, S/o.Pandi, age 49 years before this Court and set the petitioner's father at liberty from detention now the petitioner's father detained at Central Prison, Coimbatore.

For Petitioner : Mr.A.Sathish Kumar

For Respondents : Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

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

The petitioner is the daughter of P.Sakthivel, S/o.Pandi, aged 49 years, who is the detenu. The detenu has been detained by the second respondent by his order in C.No.119/G/IS09/2018 dated 11.12.2018, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and 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 would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel for the petitioner submitted that the detenu was found in possession of 98 kgs of Ganja, which attracts statutory bar under NDPS Act whereas in the similar case relied upon by the detaining authority, there is no such bar as the quantity being lesser. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4. For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 7 of the grounds of detention are extracted below:

"7..... Further in a case registered under similar sections of law Coimbatore City B2 R.S.Puram Police Station Crime No.275/2018 u/s 8(c) r/w 20(b) (ii) (C), 25, 27-A and 29 NDPS Act, 1985, bail was granted to the accused B.Irulandi and P.Dharmar by the Hon'ble Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore Court in C.M.P.No.643/2018 dated 03.09.2018. Copy of the above order has been enclosed in the booklet containing the related documents/records. Hence I infer that there is a real possibility of the accused P.Sakthivel coming out on bail by filing bail application before the appropriate court in Coimbatore City E-2 Peelamedu Police Station Crime No.1798/2018 since in similar cases the concerned court or higher court grants bail after lapse of certain time. If he comes out on bail, there are possibilities that he will further indulge in such prejudicial activities in future which will be prejudicial to the maintenance of public health and public order....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Crime No.275/2018 u/s 8(c) r/w 20(b) (ii) (C), 25, 27-A and 29 NDPS Act, 1985, wherein the accused were granted bail by the Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore Court in

C.M.P.No.643/2018 dated 03.09.2018 and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. In the similar case relied on by the authority, the accused were found in possession of Ganja, which is below commercial quality whereas in the ground case, the detenu was found in possession of 98 kgs of Ganja, which attracts statutory bar under NDPS Act. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.119/G/IS/2018 dated 26.11.2018, passed by the second respondent is set aside. The detenu, namely, P.Sakthivel, S/o.Pandi, age 49 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary of Government,
Home, Prohibition and Excise Department,
Fort Saint George, Secretariat, Chennai-600 009.
2. The Commissioner of Police/Detaining Authority
City Police Office, Coimbatore City,
Coimbatore-641 018.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.

H.C.P.No.7 of 2019

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