

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

H.C.P. No. 2014 of 2018

A. Velusamy ..Petitioner

Vs.

1. The State rep. by its
Secretary to Government,
Home, Prohibition &
Excise Department,
Fort St. George,
Chennai - 600 009.
 2. The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.
- ...Respondents

Prayer: Petition under Article 226 of the Constitution of India for issue of a Writ of Habeas Corpus to call for the records leading to the detention of the petitioner's son namely, V. Santhosh, son of A. Velusamy, aged 22 years under Act 14/1982 vide detention order dated 06.08.2018 on the file of the 2nd respondent made in proceedings in C.No. 84/G/IS/2018, quash the same and consequently direct the respondents herein to produce the body and person of V. Santhosh, S/o.A. Velusamy, aged 22 years, who is lodged at Central Prison, Coimbatore before this Honourable Court and set him at liberty.

For Petitioner :: Ms.R.Subadradevi

For Respondents:: Mr.R. Prathap Kumar,
Addl. Public Prosecutor

O R D E R

N. KIRUBAKARAN, J.

The father of the detenu is before this Court challenging the detention order passed by the 2nd respondent dated 06.08.2018 in C.No. 84/G/IS/2018 by which the detenu V. Santhosh, aged

about 22 years, has been branded as a 'Goonda' and detained under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with the order issued by the Government of Tamil Nadu in G.O.(D) No. 154, Home, Prohibition and Excise (XVI) Department dated 18.07.2018.

2. The ground case against the petitioner's son/detenu was registered in Crime No. 825 of 2018 under Sections 364(A), 395 r/w 397 IPC on the file of B-2, R.S. Puram Police Station, Coimbatore City. The detenu was arrested on 05.07.2018 and later on, produced before learned Judicial Magistrate No.I, Coimbatore and remanded to judicial custody till 20.07.2018. Further, his remand period was periodically extended upto 16.08.2018.

3. The Detaining Authority, on being satisfied, based on the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, passed the order of detention.

4. Learned counsel for the petitioner would submit that though the detenu was arrested on 05.07.2018, the order of detention was passed on 06.08.2018 with a delay of 31 days and therefore, the order of detention is liable to be set aside as per the dictum laid down by a Division Bench of this Court in Ramesh V. District Collector and District Magistrate, Trichy District and another reported in 2005 MLJ CriL 752. Excepting the ground case, there are no previous cases against the detenu, learned counsel for the petitioner would contend. Learned counsel for the petitioner would further submit that the imminent possibility of detenu coming out on bail is ruled out as it is stated in paragraph No.7 of Grounds of Detention that the bail petition filed by the detenu, in respect of the ground case, before the Principal District and Sessions Judge Coimbatore, in C.M.P. No. 2085 of 2018 was dismissed on 20.07.2018. Further, in the said paragraph, though it is stated that there is possibility of the detenu coming out on bail by filing another bail petition as Courts have granted bail in similar cases, the details regarding similar cases do not find place therein and therefore, there is total non-application of mind on the part of the detaining authority in passing the order of detention, which vitiates the detention order.

5. However, learned Additional Public Prosecutor would defend the detention order stating that not only the ground case, but there are previous cases against the detenu and in the identification parade conducted, the detenu was identified by the witnesses.

6. Heard Mr.C.D. Sugumar, learned counsel for the petitioner and Mr.R. Prathap Kumar, learned Additional Public Prosecutor for respondents and perused the records

7. A close scrutiny of the records would show that the detenu was arrested on 05.07.2018 and the order of detention was passed on 06.08.2018. There is no explanation as to why there was a delay of 31 days in passing the order of detention. In that event, the judgment of the Division Bench of this Court rendered in Ramesh V. District Collector And District Magistrate, Trichy District and another reported in 2005 MLJ (CRL.) 752 would squarely apply as inordinate delay in passing the detention order without any explanation is fatal to the detention order and the order of detention is liable to be set aside on that ground. Besides, in paragraph No.7 of Grounds of Detention, it is stated that the bail petition filed by the detenu was dismissed on 20.07.2018 and the imminent possibility of the detenu coming out on bail is ruled out. That being so, there is total non-application of mind on the part of the Detaining Authority. Moreover, in paragraph No.7, though it is stated that there is possibility of detenu coming out on bail by filing another application as in similar cases, Courts have granted bail, the details of similar cases where bail has been granted has not been stated and therefore, in the absence of material particulars, the conclusion/subjective satisfaction arrived at by the Detaining Authority cannot be sustained.

8. For the reasons stated above, the impugned detention order dated 06.08.2018 passed by the 2nd respondent in C.No. 84/G/IS/2018 is liable to be set aside and accordingly, it is set aside. The Habeas Corpus Petition is allowed. The detenu namely V. Santhosh, S/o. A. Velusamy, aged about 22 years, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other proceedings/case.

Sd/-
Assistant Registrar(CS-Insp.Cell)

//True copy//

Sub Assistant Registrar

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1. The Secretary to Government,
Home, Prohibition &
Excise Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.
3. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

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SV(CO)
GMY(25/04/2019)



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