

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2470/2018

M.Priya

..

Petitioner

vs.

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police, Detaining Authority,
Coimbatore City, Coimbatore District. ..

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 16.10.2018 in C.No.115/G/IS/2018 against the husband of the petitioner H.Mansur, M/A 28, son of Hakkim who is confined at Central Prison, Coimbatore and set aside the same and consequently, direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner ... Mr.A.Saranraj

For Respondents.. Mr.C.Iyyappa Raj, APP

ORDER

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

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 16.10.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a ''Drug Offender'' under the provisions of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the present petition is filed.

2 As per the Grounds of Detention dated 16.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following case:-

i) Adverse case:

Sl No .	Name of the Police station and Crime No.	Section of law
1	Coimbatore NIB CID, Crime No.288 of 2017	8[c] read with 20[b][ii] [B] NDPS Act, 1985

3 It is further averred that on 27.08.2018, at about 8.00 hours, the Special Sub Inspector of Police, Narcotic Intelligence Bureau [NIB] CID, Coimbatore, received an information, informing him about the person transporting banned Ganja near 'Classic Towers' and Government Hospital, Trichy Road, Coimbatore and after obtaining necessary permission from the superior Official, the Special Sub Inspector of Police along with the special police team, reached the said place and was mounting surveillance and at about 09.15 hours, on 27.08.2018, the Police party noticed a person arriving in a motorcycle bearing Registration No.TN-38-BU-8446 and the Special Sub Inspector of Police has identified himself and after complying with the formalities under NDPS Act, questioned him and the detenu, opted for a search by the police party and a perusal of the white coloured plastic bag would reveal that it was containing Ganja and it was weighing 4.500 Kilograms. The seizure was effected and the detenu was arrested at about 10.45 hours on the same day. The detenu voluntarily came forward to give a confession statement, wherein he has admitted in involvement in the adverse case as well as in the ground case. Thereafter, he was brought to NIBCID, Coimbatore and a case in Cr.No.177/2018 for the commission of the alleged offence u/s.8[c] read with 20[b][ii][B] and 25 NDPS Act, 1985, came to be registered. The detenu was produced before the Court of Judicial Magistrate No.3, Coimbatore, on 27.08.2018 and was remanded to judicial custody and is lodged at the Central Prison, Coimbatore. His remand was extended upto 12.10.2018 by the Special Court. The Detaining Authority on a perusal and consideration of the materials, has arrived at the subjective satisfaction and clamped the impugned order of detention, detaining him under the Tamil Nadu Act 14 of 1982 vide impugned order and challenging the legality of the same, the present habeas corpus petition is filed.

4 The learned counsel for the petitioner would submit that though the detenu was arrested in connection with the ground case on 27.08.2018, in the Grounds of Detention, in particular, in paragraph No.7, it was stated that though no bail application has been filed in the ground case, it was

evident from the statement of the wife of the detenu, the petitioner herein that steps are being taken to bring the detenu on bail in the said case. However, the statement of the wife of detenu, viz., the petitioner herein, was recorded only on 07.09.2018 as to the steps taken to file the bail application and since there was a considerable delay between the date of arrest of the detenu in the ground case and the order of detention, the same has not been properly explained by the Detaining Authority and the same vitiates the detention order and hence, prays for quashment of the same.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the delay had occurred on account of obtaining of the opinion from the Assistant Chemical Analyst and it was furnished only on 28.09.2018 and thereafter, the order of detention dated 16.10.2018 came to be passed and further, the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 As rightly pointed out by the learned counsel for the petitioner, in paragraph No.5 of the Grounds of Detention, it was averred that after seizure of the contraband, it was subjected to test by the Assistant Chemical Analyst, Regional Forensic Laboratory, Coimbatore and he sent his report on 28.09.2018, holding that the sample collected out of the seized contraband was Ganja and thereafter, proposal was submitted and the impugned order of detention, came to be passed on 16.10.2018. It is also to be pointed out at this juncture that as per paragraph No.7, the detenu did not take any steps for filing bail application in ground case and as per the Booklet available, the statement of the petitioner/wife of the detenu was recorded on 07.09.2018 as to the steps taken to file an application for bail. Even in the affidavit of the Sponsoring Authority dated 15.10.2018, the reason for the delay for clamping the order of detention has not been disclosed. In the considered opinion of the Court, the delay appears to be considerable and hence, on this sole ground, the detention order, impugned herein, is vitiated and is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 16.10.2018 made in C.No.115/G/IS/2018 is hereby set aside. The detenu, viz., Mansur, son of Hakkim, aged 28 years, who is now confined in the Central Prison, Coimbatore, is directed to be

released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police, Detaining Authority,
Coimbatore City, Coimbatore District.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent
Central Prison, Coimbatore.
5. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9

H.C.P.No.2470/2018

MP (CO)
GN(01/04/2019)

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