

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM:

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

H.C.P.No.2567 of 2018

V.Valli

.. Petitioner

Vs.

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

2.The District Collector and District Magistrate
Kancheepuram
Kancheepuram 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 second respondent dated 26.10.2018 in B.C.D.F.G.I.S.S.S.V.No.81/2018 against the son of the petitioner Raja, M/A 24, Son of Vijayakumar, who is confined at Central Prison, Puzhal and set aside the same and consequently, direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner .. Mr.A.Saranraj

For Respondents.. Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 26.10.2018 passed by the second respondent, in and by which, her son, the detenu has been branded as a 'Drug Offender' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, 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 14/1982), came forward to file the present Habeas Corpus Petition.

2. A perusal of the Grounds of detention order dated 26.10.2018 passed by the 2nd respondent herein, would disclose that the detenu came to adverse notice in the following cases:-
Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Vishnu Kanchi Police Station Cr.No.409/2018	8(c) r/w. 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substance Act, 1985
2	Vishnu Kanchi Police Station Cr.No.433/2018	8(c) r/w. 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substance Act, 1985

3. It is alleged in the Grounds of detention order dated 26.10.2018 passed by the 2nd respondent herein, that on 24.08.2018, Mr.Murali, Sub Inspector of Vishnu Kanchi Police Station had conducted drug raid at Toll Gate TASMAL shop and some persons who were found sitting under the Tamarind tree, on seeing the police, tried to flee away and on suspicion the police chased them and a person who was carrying a bag with him was trapped by the police, and in order to escape, he immediately took a knife and threatened the police with dire consequences. He also made an attempt to inflict the police with a cut injury and by evading it, the police personnel got escaped. Thereafter, the said accused was arrested and the police has taken custody of the bag possessed by him, which contained 160 nos. of Ganja packets.

4. The Police officials after complying with the formalities under the Narcotic Drugs and Psychotropic Substances Act, 1985, brought the detenu along with the incriminating articles to the Vishnu Kanchi Police Station and thereafter, recording the statement of Sub Inspector of Vishnu Kanchi Police Station, the Inspector of Police of Vishnu Kanchi Police Station registered a case in Crime No.449/2018 for the commission of the offences u/s.8(c), 20(b)(ii)(B) the Narcotic Drugs and Psychotropic Substances Act, 1985, as well as u/s. 294(b), 353, 307,506(ii) PC [ground case] and took up the case for investigation.

5. The detenu was produced before the Judicial Magistrate-I, Kancheepuram on the same day and was ordered to be remanded to judicial custody till 30.08.2018 and was lodged in Central Prison, Puzhal as a remand prisoner.

6. The Detaining Authority on the basis of the material

placed has arrived at the subjective satisfaction that the detenu is habitually involved in possession of illegal drugs and that the act of the detenu is prejudicial to the maintenance of public order, public health and tranquillity, which is against social protection and health of the public and as such, branded him as "Drug Offender " and detained 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.

7. The learned counsel for the petitioner would submit that in respect of two adverse cases, the detenu was produced before the Judicial Court through the police personnel on transfer of warrant and admittedly, he has not filed any bail applications in the said two adverse cases. However, the petitioner has filed a bail application in Crl.M.P.No.684 of 2018 in the ground case alone, before the Principal Special Judge, Narcotic Drugs and Psychotropic Substance and Essential Commodities Act Court at Chennai on 30.08.2018 and the same came to be dismissed on 24.09.2018, and thereafter, he filed yet another bail petition before the said learned Judge on 04.10.2018 in Crl.MP.No.794 of 2018 and the same is pending. He further submitted that the Detaining Authority, while deriving the subjective satisfaction as to the enlargement of detenu on bail, has arrived that the detenu on coming out would indulge in acts which are prejudicial to the public peace and public order, but, however, the Detaining Authority has failed to take into consideration his arrest and detention in two adverse cases, admittedly, in those cases, no bail applications have been preferred by the detenu. Since the vital fact in the ground case has been overlooked and wholly vitiated by the subjective satisfaction derived by the Detaining Authority, the petitioner prays for quashment of impugned order of detention.

8. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority after due and proper application of mind and on considering the materials placed, has rightly arrived at the subjective satisfaction that the act of the detenu is prejudicial to the maintenance of public health and public order and has rightly clamped the order of detention and prays for dismissal of this petition.

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

10. As rightly pointed out by the learned counsel appearing for the petitioner, the detenu is in custody in connection with two adverse cases and that no bail applications have been filed by him, and in so far as the Detaining Authority while deriving the subjective satisfaction in the ground case, has stated that

the detenu on coming out on bail, he would indulge in similar kind of activities, in which scenario, the authority has failed to take into consideration the non-filing of bail applications in the previous two adverse cases filed against him. In the considered opinion of the Court, the subjective satisfaction in the said aspect is arrived without application of mind by the Detaining Authority as to the vital fact and the same is vitiated. Hence, on this sole ground, the impugned order of detention warrants interference.

11. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 26.10.2018 is hereby set aside. The detenu, viz., Raja, son of Mr.Vijayakumar, aged 24 years, who is now confined in the Central Prison, Puzhal, Chennai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
- 2.The District Collector and District Magistrate
Kancheepuram
Kancheepuram District.
- 3.The Superintendent
Central Prison, Puzhal
Chennai 600 066.
4. The Joint Secretary to Government
Public(Law and order)
Fort. St. George
Chennai 9.
- 5.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2567 of 2018

KK(CO)
SP(29/03/2019)