

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM:

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

H.C.P.No.2742/2018

P.Pappathi .. Petitioner

vs.

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

2.The District Collector & District Magistrate
Erode District, Erode. ..

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the petitioner's husband viz., P.Palanisamy, son of Palani Naicker, aged about 53 years before this Court now confined in Central Prison, Coimbatore, and set him at liberty and to call for the records pertaining to the order of detention passed by the 2nd respondent vide his proceedings in CMPNo.25/Sand Offender/2018/C1 dated 02.11.2018 and set aside the same.

For Petitioner .. Mr.K.T.S.Sivakumar
for M/s M.Chellapandian

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

ORDER

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

The petitioner is the wife of the detenu herein and challenging the legality of the impugned order of detention dated 02.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a ''Sand Offender'' under the provisions of section 3[1] 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), came forward to file the present habeas corpus petition.

2 The impugned order of detention came to be passed on the solitary ground case and on a perusal of the Grounds of Detention dated 02.11.2018, would disclose among other things that on 26.10.2018, at about 4.30 hours, the Sub Inspector of Police attached to Chithode Police Station was on duty and at that time, the Village Administrative Officer and Village Assistant of Mettunasuvampalayam Revenue Village Erode North Circle, Erode Taluk, has produced the detenu stating among other things, that he has illegally quarried and transported one unit of sand in a Tractor bearing Regn.No.TN-24-AW-7022. The Sub Inspector of Police, has registered a case in Cr.No.662/2018 for the commission of the offences u/s.379 IPC and section 21[1] of Mines and Minerals [Development and Regulation] Act, 1957 [ground case] and arrested the detenu and also seized Mahindra Tractor. The detenu voluntarily came forward to give a confession statement which was recorded in the presence of witnesses and the admissible portion had also let to the discovery of relevant fact as to his previous antecedents. The detenu was produced before the Court of Judicial Magistrate No.3, Erode, on the same day and was ordered to be remanded to judicial custody till 09.11.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu in illicitly quarrying and mining of sand has led to deepening of river bends, widening of the Bhavani river and depletion of ground water table and the said act not only caused revenue loss to the Government but also resulted in lowering of the ground water level which in turn, lead to affecting agricultural operations and as such, branded him as a 'Sand Offender' and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner would submit that as per the Booklet, the offences were said to have been committed on 27.10.2018 at about 4.30 hours and whereas, the first line of paragraph No.3[i] of the Grounds of Detention would disclose as if the offence had taken place on 26.10.2018 at about 4.30 hours, though in the later portion of the paragraph, the date of the commission of the offence has been indicated as 27.10.2018 and in the light of the said discrepancy, the Detaining Authority ought to have sought for clarification from the Sponsoring Authority and admittedly, it has not been done so and as such, the impugned order of

detention is vitiated and therefore, 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 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 A perusal of paragraph No.3[i] of the Grounds of Detention would disclose that the offence is said to have taken place on 27.10.2018 at 4.30 hours whereas the first line of the said paragraph would indicate as if the offence took place on 26.10.2018 at 4.30 hours. In the considered opinion of the Court, it is a vital discrepancy and the Detaining Authority ought to have sought for a clarification from the Sponsoring Authority as to the said discrepancy and admittedly, it has not been done so. In the absence of any clarification, the non-consideration of the said discrepancy on the part of the Detaining Authority would exhibit the non-application of mind on his part to the relevant materials and therefore, this Court is of the considered view that the impugned order of detention is vitiated on this sole ground and the same warrants interference.

8 In the result, the Habeas Corpus Petition is allowed and the impugned order of detention passed by the 2nd respondent dated 02.11.2018 is hereby set aside. The detenu 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/-

सत्यमेव जयते Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

AP

To

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

2.The District Collector & District Magistrate
Erode District, Erode.

3.The Superintendent,
Central Prison, Coimbatore.

4. The Joint Secretary to Government.,
Public (Law & Order)
Fort St George, Chennai 600 009.

5. The Public Prosecutor,
High Court, Madras

+1cc to Mr.M.Chellapandian, Advocate SR.No.28506

H.C.P.Nos.2742/2018

GJ II(CO)
GMY(27/05/2019)



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