

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2818 of 2018

Akbar Basha

.. Petitioner

Versus

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

2.The Commissioner of Police/Detaining Authority
Huzur Road, Coimbatore City,
Coimbatore City,
Coimbatore-18.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records, relating to the petitioner's son detention under Tamil nadu Act 14 of 1982 vide detention order, dated 28.11.2018 on the file of the second respondent herein made in proceedings Memo C.No.121/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely A.Dinesh @ Babu, S/o.Akbar Basha, aged 24 years before this Court and set the petitioner's Son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the father of the detenu, who, vide impugned Order of Detention dated 28.11.2018 passed by the 2nd

respondent by invoking Section 2(e) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Drug Offender', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention dated 28.11.2018 would disclose that the order of detention was passed based on a solitary case. It is further averred in the ground of detention that on 29.10.2018 at about 15.00 hours, the Inspector of Police, Law and Order, E-2 Peelamedu Police Station, Coimbatore City was on duty and at that time, the Sub-Inspector of Police, Special team, Coimbatore City appeared before him and stated that he has an information from his informant about trafficking of banned drug Ganja by three persons in a car. Accordingly a surveillance mounted and a car bearing Registration No.TN-15-Y-7999 was inspected and the inmates of the care were identified as Sakthivel, Easwari and Ashokkumar @ Ashok and motorcycle was also intercepted bearing Registration No.TN-66-J-2284 in which the rider and pillion was later identified as Mohammed Raffi and Gokulakannan @ Gokul. They further identified a two wheeler bearing registration No.TN-38-BD-9270 wherein three persons, which include the detenu and the said persons made an attempt to flee from the scene of occurrence and they were apprehended and having developed suspicion that they are transporting poisonous narcotic substance, they were demonstrated with sufficient details and on search, banned substance i.e., Ganga was seized and samples were drawn and later on, accused including the detenu along with the seized articles were brought to Coimbatore city, E-2 Peelamedu Police Station and a case in Cr.No.1798/2018 was registered under Section 8(c) r/w 20(b)(ii)(c), 25, 27A and 29(1) NDPS Act 1985. The detenu was produced before the Court of Judicial Magistrate No.VI, Coimbatore on 30.10.2018 and he was remanded to judicial custody and the remand period was extended till 16.11.2018.

3. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already came to adverse notice in a solitary case and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to paragraph No.7 of the impugned order and would submit that the detenu did not file any bail application in the solitary case. However, the detention order would disclose that the mother of the detenu is taking steps to get bail for detenu and having derived such subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail, has clamped the impugned order of

detention and would further add that to derive the subjective satisfaction, a similar order dated 03.09.2018 in Cr1.M.P.No.643 of 2018 passed by the very same Court has been relied upon. The primordial submission of the learned counsel for the petitioner is that in the similar case, though the quantity was huge, the concerned accused was enlarged on bail and therefore, the order cannot be said to be similar in nature and prays for quashment of the impugned order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence prays for dismissal of this petition.

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

7. In page no.228 of the booklet order dated 09.09.2018 in Cr.M.P.No.643 of 2018 in Cr.No.275 of 2018 on the file of B2-R.S.Puram Police Station is available and the bail application is available at Page No.223 and it would disclose that the bail was sought on account of the fact that it was statutory bail and the charge sheet has also been filed. In the considered opinion of this Court, the statutory period before which charge sheet would be filed, have not been reached in the ground case. Therefore, the order granting bail in Cr.M.P.No.643 of 2019 dated 03.09.2018 on the file of Additional Sessions Judge, Special Court for Essential Commodities Act cases, Coimbatore Court cannot said to be the similar case and that apart, rigor of Section 37 of NDPS Act would also come into operation and hence on the sole ground, it warrants interference and the Detaining Authority has failed to advert to the said material fact.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C.No.121/G/IS/2018, dated 28.11.2018 is set aside and the detenu namely, A.Dinesh @ Babu, S/o.Akbar Basha, aged 24 years, who is confined at Central Prison, Coimbatore, is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

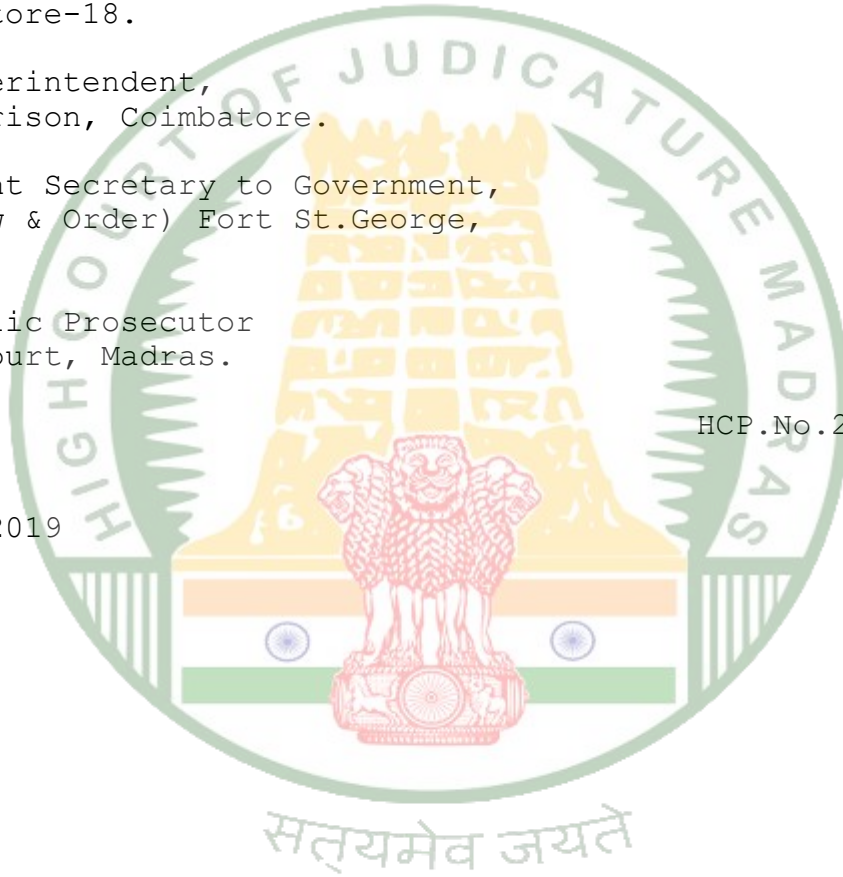
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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort.St.George,
Chennai-600 009.
- 2.The Commissioner of Police/Detaining Authority
Huzur Road, Coimbatore City,
Coimbatore City,
Coimbatore-18.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public(Law & Order) Fort St.George,
Chennai-9.
- 5.The Public Prosecutor
High Court, Madras.

HCP.No.2818 of 2018

ssd(co)
nr 03/07/2019



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