

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.95 of 2020

Kalyani

... Petitioner

Vs

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

2.The District Collector and District Magistrate,
Tiruppur District,
Tiruppur.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records relating to the Petitioner's son detention order under Tamil Nadu Act 14 of 1982 vide detention order, dated 25.11.2019 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.26/Sexual Offender/2019, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Manimuthu, S/o.Palaniappan, aged 32 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.R.Prathap Kumar,
Additional Public Prosecutor.

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2.The Petitioner who is the mother of the detenu has challenged the detention order passed against the detenu in Memo Cr.M.P.No.26/Sexual Offender/2019 dated 25.11.2019, branding him as 'Sexual Offender' under Section 2 (ggg) of Tamil Nadu Act 14 of 1982 by the Second Respondent based on the case registered against him in Crime No.7 of 2019.

3.The case of the prosecution is that the detenu is said to have sexually assaulted a 16 years old minor girl, while the minor girl was working in private concern. Because of that the minor girl got conceived and later it was revealed that the detenu sexually assaulted the minor on 07.07.2019 threatening her that he would murder her if she revealed the said facts to anybody. The pregnancy got aborted as it was happened because of the sexual assault. Based on that a complaint has been registered in the said case in Crime No.7 of 2019 for the offence under Sections 5 (j) (ii), 5 (l) read with 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 506 (ii) of Indian Penal Code on the file of the All Women Police Station, Kangayam and based on the said case, detention order has been passed and the said order is challenged before this Court.

4.Heard Mr.W.Camyles Gandhi, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

5.The learned Counsel appearing for the petitioner submitted that though the detenu was arrested on 27.08.2019, the detention order was passed only on 25.11.2019 after a delay of more than 60 days. Therefore, the entire detention order passed is vitiated and sought for allowing this petition.

6.However, the learned Additional Public Prosecutor opposed the said contentions stating that the delay has been caused due to administrative reasons and because of collecting of materials from lower Courts and from various authorities and the said delay is not deliberate and the same could be explained and hence, he seeks for dismissal of this petition.

7.With regard to the ground raised by the learned Counsel appearing for the Petitioner that there was a delay in passing the detention order and the representation sent on behalf of the detenu has not been considered in time, it is brought to the notice of this Court that there is no deliberate delay on the part of the detaining authority in disposing of the representation and in other words, the delay is neither wilful nor wanton. Therefore, the contention of the learned Counsel appearing for the petitioner is rejected.

8. Further, as laid down by the Hon'ble Supreme Court in Union of India and Another -vs- Dimple Happy Dhakad reported in '2019 SCC OnLine SC 875' it has been held that each case has to be decided based on the gravity of the offence and the facts of the case and the relevant Paragraph of the said Judgment is usefully reproduced as follows:

"The court must be conscious that the satisfaction of the detaining authority is "subjective" in nature and the court cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention. It does not mean that the subjective satisfaction of the detaining authority is immune from judicial reviewability. By various decisions, the Supreme Court has carved out areas within which the validity of subjective satisfaction can be tested. In the present case, huge volume of gold had been smuggled into the country unabatedly for the last three years and about 3396 kgs of the gold has been brought into India during the period from July 2018 to March 2019 camouflaging it with brass metal scrap. The detaining authority recorded finding that this has serious impact on the economy of the nation. Detaining authority also satisfied that the detainees have propensity to indulge in the same act of smuggling and passed the order of preventive detention, which is a preventive measure. Based on the documents and the materials placed before the detaining authority and considering the individual role of the detainees, the detaining authority satisfied itself as to the detainees' continued propensity and their inclination to indulge in acts of smuggling in a planned manner to the detriment of the economic security of the country that there is a need to prevent the detainees from smuggling goods. The High Court erred in interfering with the satisfaction of the detaining authority and the impugned judgment cannot be sustained and is liable to be set aside."

9. It is also seen from the records that the detaining authority in Paragraph Number 5 of the detention order, has categorically stated that how he arrived at the satisfaction and came to the conclusion that the Courts are granting bail and there is no prohibition for the detenu to file bail petition in future. Further, in the Judgment of the Hon'ble Supreme Court of India in the case of "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498", it has been held that

once the detaining authority is satisfied with the imminent possibility of the detenu coming out on bail, the detention order cannot be vitiated and the relevant Paragraph of the said Judgment is usefully extracted as follows:

"48. Now so far as the reliance upon the decisions of this Court in the cases of Rekha (supra) and T.V. Sraavanan (supra) by the learned Counsel appearing on behalf of the detenus is concerned, at the outset, it is required to be noted that on the facts and circumstances of the case, narrated hereinabove, the aforesaid decisions applicable to the facts of the case on hand. Even in the case of Rekha (supra), the decision of the Constitution Bench of this Court in the case of Rameshwar Shaw (supra) was not placed before the Court for consideration and therefore this Court had no occasion to consider the said decision. It is also required to be noted that even after considering the decision of this Court in the case of Rekha (supra), which has been heavily relied upon by the learned counsel appearing on behalf of the detenus, in the case of Dimpy Happy Dhakad (supra), this Court has observed that even if a person is in judicial custody, he can be put on a preventive detention provided there must be an application of mind by the Detaining Authority that (i) the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show whether the Detaining Authority was aware of the fact that the detenu was already in custody; (ii) that the Detaining Authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the Detaining Authority that the detenu is already in custody and is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities with the subjective satisfaction of the Detaining Authority."

10. From the above, it is clear that the detaining authority is satisfied that if the detenu is likely to be released from the custody, he is likely to indulge in such prejudicial activities and hence, the detaining authority is justified in passing the detention order.

11. Accordingly, this Petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//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 District Collector and District Magistrate,
Tiruppur District,
Tiruppur.
3. The Public Prosecutor,
High Court of Madras,
Chennai.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat,
Fort St, George, Chennai-9.

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