

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.203 of 2020

Kanagaraj

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.

2. The District Magistrate and District Collector,
(Detaining Authority),
The Nilgiris,
Udhagamandalam.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, directing to produce the body of the Petitioner's son named Subramaniam age 25, presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 19.11.2019 made in Cr.M.P.No.06/2019 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.N.Ponraj.

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 father of the detenu has

challenged the detention order passed against the detenu in Cr.M.P.No.06/2019 dated 19.11.2019 by the Second Respondent, branding him as 'Sexual Offender' under Section 2 (ggg) of Tamil Nadu Act 14 of 1982, as the Petitioner's son is said to have sexually assaulted a 10 year old child who was studying V standard.

3.The case of the prosecution is that based on the complaint, it is alleged that the detenu who was residing near the house of the minor child, has called the minor child to his house and sexually assaulted her twice on different dates and warned her not to reveal the said happening to anybody. As the child was very much depressed and exhausted, the mother asked her child about the details of what has happened to her and thereafter, the child narrated about the incident of sexual assault. Hence, the victim's mother gave a complaint on 17.09.2019 and the case has been registered against the detenu under Sections 5(m), 5(1) read with 6 of Protection of Children from Sexual Offences Act, 2012 and the accused was arrested on 17.09.2019 and based on the said case, detention order has been passed.

4.Heard Mr.N.Ponraj, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

5.The learned Counsel for the Petitioner would submit that though the detenu was arrested on 17.09.2019, the detention order was passed only on 19.11.2019 and hence, there was a delay in passing the detention order. Secondly, he would submit that similar case referred in the grounds of detention regarding the imminent possibility of coming out on bail, is not similar in nature and therefore, there is non-application of mind on the part of the detaining authority and he sought for setting aside the detention order.

6.However, the learned Additional Public Prosecutor submitted that delay in passing detention order is due to the collection of materials from the Lower Courts and various authorities and also due to the administrative works vested with the detaining authority and the said delay could be explained. Hence, there is no deliberate delay on the part of the detaining authority in passing the detention order and in other words, the delay is neither wilful nor wanton.

7.Further, regarding the contention of the learned Counsel for the petitioner that the similar case referred in the detention order is not similar in nature and therefore, the imminent possibility of the detenu coming out on bail is ruled out, the learned Additional Public Prosecutor appearing for the

respondents relied upon the Judgment of the Hon'ble Supreme Court in the case of "Union of India and Another -vs- Dimple Happy Dhakad" reported in '2019 SCC OnLine SC 875' in which it has been held that the imminent possibility of coming out on bail has to be decided based on the gravity of the offence and the facts of the case. Therefore, the contentions of the learned Counsel for the Petitioner are not sustainable and sought for dismissing the petition.

8. With regard to the first ground raised by the learned Counsel appearing for the Petitioner that there was a delay in passing the detention order, it is brought to the notice of this Court that there is no deliberate delay on the part of the detaining authority in passing the detention order and in other words, the delay is neither wilful nor wanton. With regard to the second ground raised by the learned Counsel appearing for the petitioner that imminent possibility of detenu coming out on bail is ruled out as the similar case referred in the grounds of detention is not similar in nature, as rightly pointed out by the learned Additional Public Prosecutor appearing for the respondents, the imminent possibility of the detenu coming out on bail has to be decided based on the gravity of the offence and the facts of the case 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' 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 detenues 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 detenues, the detaining authority satisfied

itself as to the detenues' 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 detenues 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. Further, it is seen from the records that the detaining authority in Paragraph Number 6 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. Therefore, the contentions of the learned Counsel appearing for the petitioner are rejected.

11. Accordingly, this Petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.
2. The District Magistrate and District Collector,
(Detaining Authority),
The Nilgiris,
Udhagamandalam.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

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CO (BR)
BDL/08/01/2021