

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.231 of 2020

Ammu

... Petitioner

.Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
2. The District Collector & District Magistrate,
Vellore District, Vellore - 9. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent 24.01.2020 in C3-D.O.No.08/2020 against the petitioner husband Koiya Mari @ Marimuthu, Male aged 31 years S/o.Kuppan who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel.

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 Conference".

2.This Petition has been filed by the wife of the detenu challenging the detention order passed against her husband in C3-D.O.No.08/2020 on 24.01.2020 by the second respondent terming him as 'Goonda' under Section 2 (f) of the Tamil Nadu Act 14 of 1982 based on the ground case registered against him for the offence under Sections 394, 397, 366, 376D, 506 (ii) of Indian Penal Code in Crime Number 39 of 2020 and it is also seen that he has got an adverse case registered in Crime Number 559 of 2016 for the offence under Sections 120B, 147, 148, 149, 364, 342 & 302 of Indian Penal Code.

3.The facts of the ground case is that when one couple went to Vellore Fort Park in the evening, the other accused along with the detenu robbed the victim's cell phone, bag, purse with IDBI ATM card, Pan card and ESI card and a cash of Rs.30/- and also the purse, ATM cards, cell phone and a cash of Rs.300/- from the victim's lover and the robbed materials have been taken away by the detenu. Further, the associates of the detenu gang raped the girl and therefore, First Information Report has been registered in the said Crime Number 39 of 2020. Based on the ground case and the adverse case, the detention order has been passed and the said detention order is challenged before this Court.

4.The learned Counsel for the Petitioner submitted that the detenu has not committed the offence of rape and he is only accused of robbery and therefore, he cannot be treated on par with the other accused who gang raped the victim. Secondly, he submitted that though the authority in Page No.7 of the detention order has stated that there is an imminent possibility of the detenu coming out on bail and would indulge in this kind of activities, there are no materials available to come to the satisfaction that there is an imminent possibility of the detenu coming out on bail when there is no bail petition pending. Thirdly, he submitted that arrest intimation memo has not been served upon the relatives or friends of the detenu.

5.The learned Counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" to stress the point that there should be materials available to come to the conclusion of likelihood or imminent possibility of the detenu coming out on bail. By citing the Judgment, the learned Counsel for the petitioner argued that there are no materials for the detaining authority to come to the said conclusion. Hence, he seeks to set aside the detention order.

6.However, the learned Additional Public Prosecutor submitted that detenu has not been termed as 'Sexual Offender' and he has been termed as 'Goonda' as he committed the offence of robbery. Secondly, he submitted that imminent possibility of coming out on bail has been stated in Page Number 7 of the detention order and the detaining authority has come to the conclusion that there is a likelihood of the detenu coming out on bail. He relied upon the Judgment of the Hon'ble Supreme Court of India in "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498" to stress the point that once the authority is satisfied with the imminent possibility of coming out on bail, the detention order cannot be vitiated. Therefore, he submitted that once the authority came to the satisfaction based on relevant materials, the same cannot be set

aside or this Court can substitute its own decision.

7. With regard to the intimation of arrest which has to be communicated to the close relative or friend of the detenu, the learned Additional Public Prosecutor submitted that Page Number 77 of the booklet contains the arrest intimation memo with the endorsement of the detenu's wife. Therefore, the intimation of arrest has already been given and even that ground is not available to the petitioner and sought for dismissal of this petition.

8. Heard Mr. S. Senthilvel, learned Counsel appearing for the Petitioner and Mr. R. Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents and perused the materials available on records.

9. As rightly pointed out by the learned Additional Public Prosecutor, the detenu has been termed as 'Goonda' and not as 'Sexual Offender' as he was only involved in the offence of robbery. Secondly, regarding the imminent possibility of coming out on bail, the detaining authority in Page Number 7 of the detention order has categorically stated that how he arrived at the satisfaction and the said paragraph is usefully extracted as follows:

"I am aware that Thiru. Koiya Mari @ Marimuthu has not filed any bail application in ground case in Vellore North L&O Police Station Crime No. 39/2020, u/s. 394, 397, 366, 376D, 506(ii) I.P.C. before any Court. I am aware that, many cases the accused have been enlarged bail from the concerned Courts. As bails are being granted by Courts in such cases, there is very likely that he (Thiru Koiya Mari @ Marimuthu) may come out of bail, by filing any bail application before any Court. If he enlarge himself on bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and public peace. Further, the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order and public peace. From the materials placed before me, I am satisfied that Thiru Koiya Mari @ Marimuthu is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in activities which are prejudicial to the maintenance of public order and public peace."

Hence, the authority came to the conclusion that the Courts are granting bail and there is no prohibition for the detenu to file bail petition in future.

10. The learned Additional Public Prosecutor relied upon the Judgment of the Hon'ble Supreme Court of India in "Union of India -vs- Ankit Ashok Jalan" reported in "2019 SCC OnLine SC 1498" to stress the point that once the authority is satisfied with the imminent possibility of the detenu coming out on bail, the detention order cannot be vitiated. He relied upon Paragraph No.48 of the said Judgment in which the Judgment cited by the learned Counsel for the Petitioner has also been discussed and the said Paragraph 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."

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. In this case, in Paragraph Number 5, Page Number 7 of the detention order which is extracted above, it is seen that the detaining authority came to the categorical finding about the likelihood of the detenu coming out on bail. Therefore, the detention order is not vitiated. Further, the non-service of arrest intimation to the relatives or friend of the detenu as contended by the learned Counsel for the petitioner is concerned, it has been pointed out by the learned Additional Public Prosecutor that in Page Number 77 of the booklet which is the arrest intimation memo, the detenu's wife has signed and got information regarding the arrest of the detenu. Therefore, the contentions of the learned Counsel for the petitioner cannot be sustained.

12. Accordingly, this petition is dismissed.

13. While dismissing the Writ Petition, this Court would like to make the following observation:
The alleged facts as stated in FIR as well as in the grounds of detention would throw light on the fact that safety of women is endangered. In this case, the accused gang allegedly waited for the lovers to visit the Vellore Fort Park and the accused threatened them, attacked the male friend and sexually assaulted the girl apart from robbing their belongings at knife point. Two things have to be considered, i.e., lovers or friends should avoid visiting isolated places or areas where the movement of people is less. Even though they have got every right to visit any place, in their own interest only, this suggestion is given. Secondly, the police should ensure that in crime prone areas, police should have regular patrolling. If necessary, more police officers should be on the beat, so that it will deter criminals from indulging in any criminal activities and also give confidence to the people that their safety is assured. Police should have been aware of the fact that lovers used to frequent places like parks and isolated places. If offences are committed in those areas, security should be enhanced or police patrolling in those areas should be increased. This Court hopes that considering the location of Fort area and movement of people is restricted in the evening hours, police booth will be put up in dark places.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
2. The District Collector & District Magistrate,
Vellore District,
Vellore - 9.
3. The Superintendent,
Central Prison, Vellore.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai-9.
5. The Public Prosecutor,
High Court of Madras,
Chennai.

H.C.P.No.231 of 2020

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