

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.6.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

H.C.P.No.275 of 2020

T.Baby,
W/o.Tharmalingam

... Petitioner

-vs-

- 1.The District Collector cum District Magistrate,
Collectorate Office at Kaaraikaal,
Kaaraikaal-609 602.
- 2.The Principal Secretary to Government,
Government of India,
Home Department (Internal Security) North Block,
New Delhi.
- 3.The Additional Principal Secretary to Government,
Home Department,
Secretariat, Kuber Salai, Puducherry.
- 4.The Superintendent of Police (Central Prison),
Kaalapattu, Puducherry. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 1st respondent in D.O.No.6051/DM/PPASAA/2020/294 dated 22.01.2020 against the detenu Mrs.R.Ezhilarasi @ Meera, Wife of Mr.Raamu @ Ramachandran confined at Central Prison, Puducherry and set aside the same, consequently direct the respondents to produce the body of the detenu before this Court and set her at liberty.

For Petitioner : Mr.N.R.Elango

For Respondents: RR1, 3 & 4 - Mr.D.Bharatha
Chakravarthy,
Public Prosecutor (Pudhucherry)

: R2 - Mr.D.Simon,
Central Government Standing Counsel

ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J)

Heard Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner; Mr.D.Bharatha Chakravarthy, learned Public Prosecutor (Pudhucherry) appearing for respondents 1, 3 and 4; and Mr.D.Simon, learned counsel appearing for the 2nd respondent.

2.The petitioner is the mother of the detainee, Ezhilarasi @ Meera, wife of Raamu @ Ramachandran, who has been detained under the provisions of the Pudhucherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) as a "Dangerous Person".

3.The learned Senior Counsel appearing for the petitioner submitted that the main ground on which the impugned order of detention has been passed is on the ground that there are thirteen cases pending against the detainee, which have been referred to in the grounds of detention in paragraph No.2 thereunder, and out of the thirteen cases, seven cases were cited as ground cases in an earlier order of detention passed against the detainee dated 06.07.2017. The said order of detention was challenged by filing H.C.P.No.1274 of 2017 by the detainee's mother. The said Habeas Corpus Petition was allowed by order dated 13.10.2017 and the order of detention was quashed.

4.It is submitted that if the Detaining Authority has to pass fresh order of detention, then there should be fresh grounds to do so and he has to draw requisite subjective satisfaction from the fresh grounds and cannot rely upon the cases, which were the basis for the earlier detention order, which have been struck-down by the Court in a Habeas Corpus Petition.

5.In support of such contention, the learned Senior Counsel referred to the decision of the Hon'ble Supreme Court in the case of Chhagan Bhagwan Kahar vs. N.L.Kalna and others [(1989) 2 SCC 318]. It is submitted by the learned Senior Counsel that this decision was quoted with the approval by the Hon'ble Supreme Court in the case of Anant Singh Alias Anant Kumar Singh vs. State of Bihar and others [(2017) 13 SCC 229].

6.Further, it is submitted that the cases which are mentioned in Sl.Nos.10 to 13 in paragraph No.2 of the detention order, are of the year 2012, and could not have been the basis for passing an order of preventive detention. So far as the cases which are mentioned in Sl.Nos.8 and 9 are concerned, they have been registered during 2019 and 2018 respectively and even according to the Detaining Authority, the cases are under

investigation and the impugned detention order has been passed in the year 2020 after nearly a year and these could not have been the ground cases to detain the detainee by way of preventive detention and this was precisely the reason as to why the earlier order of detention dated 06.07.2017 was quashed by this Court in H.C.P.No.1274 of 2017 dated 13.10.2017.

7.On the above grounds, the learned Senior Counsel submitted that the impugned order of detention is ex facie illegal and liable to be set aside.

8.Mr.D.Bharatha Chakravathy, learned Public Prosecutor (Pudhucherry) while vehemently opposing the grounds raised by the learned Senior Counsel appearing for the petitioner gave a brief preface to his submissions by referring as to why the detainee is a very "dangerous person". The various murders, which have taken place including the murder of the detainee's husband, namely, Mr.Raamu @ Ramachandran, had been referred to and the murder of one Vinodha, who was the first wife of the said Raamu @ Ramachandran and others were also referred to including a politically important person who was also murdered. It is further submitted that all the previous cases were the heinous crime committed by the detainee and her accomplice during broad daylight by throwing explosive substance, etc. and if the detainee is to be set free, public tranquillity will be affected.

9.We have elaborately heard the submissions made on either side and perused the materials brought on record.

10.For better reference, the list of criminal cases in which the detainee is involved as set out in paragraph No.2 of the order of detention, is quoted herein below:

Sl.No.	Details of the criminal cases	Police Station	Status of the case
1.	53/13 u/s.143, 148, 341, 120(b), 302 IPC r/w. 149 IPC	Neravy PS	Pending Trial
2.	322/15 u/s 147, 148, 341, 342, 294(b), 506(II), 302 r/w 3(1) of TNPPDL Act	Sirakazhi PS	Pending Trial
3.	01/2017 u/s 147, 148, 332, 395, 307, 448, 302, 120(b), 427 IPC r/w 149 IPC and 3 & 4 of Explosive Substances Act, 1908	Neravy PS	Pending Trial
4.	266/11 u/s 147, 148, 307, 323, 354, 506(II) r/w 149 IPC	Town PS	Acquitted
5.	77/2016 u/s 384 IPC	T.R.Pattinam PS	Pending Trial
6.	02/2017 u/s 336, 427 and 3 & 4 of Explosive Substances Act, 1908	IPCT.R.Pattinam PS	Pending Trial

Sl.No.	Details of the criminal cases	Police Station	Status of the case
7.	104/11 u/s 147, 448, 323, r/w 149 IPC	506T.R.Pattinam PS	Acquitted
8.	91/2019 u/s 143, 294(b), 109, 506(i) r/w 149 IPC	427,T.R.Pattinam PS	Under Investigation
9.	21/2018 u/s 120(B) r/w 34 IPC & 29(1) of Arms Act 1959 @ 120(B), 150, 212 r/w 34 IPC & 27(1) of Arms Act, 1959	D Nagar PS, Puducherry	Under Investigation
10.	17/2012 u/s 465, 420, 167 r/w 34 IPC and 511 IPC	IPC Neravy PS	Pending Trial
11.	20/2012 u/s 409, 420, 167 r/w 120B IPC	IPC Neravy PS	Pending Trial
12.	30/2012 u/s 409, 420, 167 r/w 120B IPC	IPC Neravy PS	Pending Trial
13.	71/2012 u/s 465, 420, 167 r/w 34 IPC	IPC Neravy PS	Pending Trial

11. So far as the cases in Sl.Nos.4 and 7 are concerned, we find that the detainee has been acquitted. The cases in Sl.Nos.1 to 3, 5, 6 and 10 to 13 are pending trial. These cases were pending, when the earlier order of detention dated 06.07.2017 was passed. When the said detention order was put to challenge before this Court in H.C.P.No.1274 of 2017, this Court quashed the same on the ground of inordinate and unexplained delay.

12. The Hon'ble Supreme Court in the case of Chhagan Bhagwan Kahar [supra], considered as to how the Detaining Authority should pass fresh orders of detention when an earlier order of detention has been set at naught by the Constitutional Court. In paragraph No.12, this is what the Hon'ble Supreme Court has pointed out, which reads as follows:

"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."

13. Thus, it cannot be disputed that the Detaining Authority would be entitled to pass fresh order of detention and merely because the earlier order of detention has been quashed, cannot

be a bar for the Detaining Authority to act in accordance with law. However, the question is how the Detaining Authority should proceed while passing such fresh order. The answer lies in the decision of the Hon'ble Supreme Court referred supra.

14.It has been pointed out that there must be fresh facts for passing subsequent order or a fresh order and in cases where the detention order is quashed by the Court by way of Writ of Habeas Corpus or Certiorari, the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass fresh orders and once the Court strikes down an earlier order by issuing a rule, it nullifies the entire order.

15.As pointed out above, the cases which are mentioned in Sl.Nos.1 to 7 were referred to in the earlier detention order, which has been quashed and therefore, the Detaining Authority could not have formed an opinion based upon those cases. Further, the cases referred to in Sl.Nos.10 to 13 are of the year 2012 and they were not referred to in the earlier order of detention dated 06.07.2017 and obviously, the cases registered in the year 2012 which are now pending trial, could not have been the basis for an order of preventive detention. This leaves us with the cases in Sl.Nos.8 and 9. The case in Sl.No.8 has been registered as Crime No.91/2019 on the file of T.R.Pattinam Police Station and the case in Sl.No.9 has been registered as Crime No.21/2018 on the file of the D Nagar Police Station and both the cases are under investigation.

16.We are informed by the learned Senior Counsel for the petitioner that the detenu was granted bail in the said case and she has complied with the condition, which was imposed. We find that those cases were registered in the year 2018 - 2019 and are still under investigation and could not have been the basis to pass an order of preventive detention in January 2020 on the ground that if the petitioner is allowed to move around freely, she would cause breach of public peace and public tranquillity and likely to cause fear to the public.

17.Thus, for the above reasons, we find that the impugned order of preventive detention is not justified in law.

18. Accordingly, this Habeas Corpus Petition is allowed, the order of detention dated 22.01.2020 is set aside and the detainee - Mrs.R.Ezhilarasi @ Meera, Wife of Mr.Raamu @ Ramachandran, is directed to be set at liberty forthwith unless her detention is otherwise required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector cum District Magistrate,
Collectorate Office at Kaaraikaal,
Kaaraikaal-609 602.
- 2.The Principal Secretary to Government,
Government of India,
Home Department (Internal Security) North Block,
New Delhi.
- 3.The Additional Principal Secretary to Government,
Home Department,
Secretariat, Kuber Salai,
Puducherry.
- 4.The Superintendent of Police (Central Prison),
Kaalapattu, Puducherry.
- 5.The Public Prosecutor,
Madras High Court.

WEB COPY

H.C.P.No.275 of 2020

ln[co]
srg 30/07/2020