

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM :

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

H.C.P.No.552 of 2020

Sasikala ... Petitioner/Sister of Detenue
.Vs.

1. The State of Tamil Nadu,
Rep., by its Additional Chief Secretary
to Government,
Home, Prohibition and Excise Department,
Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai - 600007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus calling upon the production of the records relating to the detention order dated on 07.02.2020 made in detention order Memo No.BCDFGISSSV/74/2020 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the detenu of son Rajan @ Thundu Beedi Rajan, S/o.Munusamy aged about 40 years branded as Goondas and now confined in Central prison, Puzhal, Chennai before this Court and set him at liberty forth.

For Petitioner : Mr.P.Sundararajan.

For Respondents: Mr.T.Shunmugarajeswaran
GA (Crl. Side)

ORDER
(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 sister of the detenu challenging the detention order passed against her brother in Memo No.BCDFGISSSV/74/2020 on 07.02.2020 by the second respondent terming him as 'Goonda' under Section 2 (f) of the

Tamil Nadu Act 14 of 1982 as he has got an adverse case registered under Sections 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and 506 (ii) of Indian Penal Code and about fifteen previous cases to his credit apart from the ground case in which the detenu has allegedly poured kerosene on his wife and set fire and murdered her.

3. Heard Mr.P.Sundararajan, learned Counsel appearing for the Petitioner and Mr.T.Shunmuga Rajeswaran, learned Government Advocate (Criminal Side) appearing for the Respondents and perused the materials available on records.

4. The learned Counsel for the petitioner submitted that bail petition filed by the detenu is pending and there is no likelihood of the detenu coming out on bail and there is no imminent possibility of the detenu coming out on bail and therefore, there is non-application of mind on the part of the detaining authority while passing the detention order. Further, he submitted that the representation sent on behalf of the detenu dated 05.03.2020 has not been disposed of and hence, the detention order is vitiated and sought for allowing this petition.

5. However, the learned Government Advocate (Criminal Side) submitted that the ground case is a cruel murder of his wife by the detenu and he has also got fifteen previous cases to his credit apart from the ground case. Regarding the imminent possibility of coming out on bail, he submitted that each case has to be decided based on the gravity of the offence 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'. Secondly, regarding the representation sent on behalf of the detenu dated 05.03.2020, he submitted that the representation was received on 09.03.2020 and remarks were called for on the same day. Further, remarks were received on 12.03.2020 and the Deputy Secretary dealt with the same on 13.03.2020 and the rejection letter was passed on 17.03.2020. Therefore, there is no delay in considering and disposing of the representation sent on behalf of the detenu. Therefore, the contentions of the learned Counsel for the Petitioner are not sustainable and sought for dismissing the petition.

6. As rightly contended by the learned Government Advocate (Criminal Side) the imminent possibility of coming out on bail cannot be a ground for vitiating the detention order as each case has to be decided based on the gravity of the offence 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'. Secondly, it is seen that petition for bail in CrI.M.P.No.7517 of 2019 on the file of the Principal District

and Sessions Court, Chengalpattu in Crime Number 598 of 2019 which is the ground case, is pending. Hence, when the bail petition is pending, there is a possibility of the detenu coming out on bail.

7. Therefore, based on the materials available, the detaining authority has recorded a finding that there is a possibility of the detenu coming out on bail and indulge in criminal activities. Hence, based on relevant materials, the finding has been arrived and this Court cannot substitute the same with its own opinion and thus, the detention order cannot be vitiated based on the contentions of the learned Counsel for the petitioner. With regard to the representation sent on behalf of the detenu, it has been categorically stated by learned Government Advocate (Criminal Side) as to how the representation has been dealt with and rejected on 17.03.2020. Hence, there is no delay in disposing of the representation sent on behalf of the detenu. Therefore, the detention order is valid.

8. Accordingly, this Petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The State of Tamil Nadu,
Rep., by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai - 600007.
3. The Joint Secretary to Government,
Public Law & Order, Fort St. George, Chennai-9.
4. The Superintendent of Police, Central Prison,
Puzhal, Chennai
5. The Public Prosecutor, High Court of Madras.

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