

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.637 of 2020

Paneerselvam

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Reptd. by its Secretary to Government, (Home)
Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Kallakurichi District,
Kallakurichi.
- 3.The Superintendent of Police,
Central Prison,
Cuddalore District.
- 4.The Superintendent of Police,
O/o.Superintendent of Police,
Kallakurichi District,
Kallakurichi.
- 5.The Inspector of Police,
Elavanasurkottai Police Station,
Kallakurichi District.

... 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 impugned order of detention passed by the second respondent in D.O.No.C2/3/2020 dated 27.02.2020 and set aside the same and consequently direct the respondents to produce the detenu Kottupuli @ Selvamani, son of Paneerselvam, aged about 30 years, petitioner's son now confined at Central Prison, Cuddalore before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Saravana Kumar.

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.The Petitioner who is the father of the detenu has challenged the detention order passed against the detenu in D.O.No.C2/3/2020 dated 27.02.2020 by the Second Respondent, terming him as 'Sexual Offender' under Section 2 (ggg) of Tamil Nadu Act 14 of 1982, as the detenu had allegedly kidnapped and raped the minor girl aged about 16 years and therefore, First Information Report has been registered in Cr.No.23 of 2020 on 23.01.2020 for the offence under Sections 366(A) of Indian Penal Code @ 366 (A) of Indian Penal Code and under Section 5 (1) and 6 of Protection Of Children from Sexual Offences Act, 2012. Therefore, the said detention order has been passed.

3.Heard Mr.S.Saravana Kumar, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4.The learned Counsel for the Petitioner had argued the matter very elaborately stating that it is neither the case of kidnapping nor rape. The detenu and the alleged victim are neighbours living in the same street and they have loved each other. In view of the said relationship only, they have eloped and got married in temple and they had lived together in Kerala as husband and wife. Therefore, he would submit that there is no question of kidnap and rape.

5.Further, the learned Counsel for the Petitioner submitted that this case is something different from other cases. He submitted that even the invocation of Protection Of Children from Sexual Offences Act, 2012, itself is unwarranted. He attacked the detention order stating that there is non-application of mind on the part of the detaining authority while passing the detention order as no bail application is pending which is said to have filed by the petitioner and there is no details in the detention order as to how the detaining authority has stated that the relatives of the detenu are taking steps to bring the detenu on bail. Therefore, he submitted that the entire detention order is vitiated.

6.Secondly, the learned Counsel for the petitioner submitted

that Page Numbers 46, 47 which are the remand order and remand extension order and further the Page Numbers 41,48, 61 to 63, are in English and the same were not translated and supplied to the detenu in Tamil, since the detenu has not got English knowledge. Therefore, in the absence of translated copies, the detention order is vitiated. Thirdly, the learned Counsel appearing for the Petitioner submitted that Page Number 49 of the booklet is illegible, preventing him from giving effective representation to be considered which has to be sent by him. In view of the above, he submitted that the detention order is liable to be set aside and sought for allowing this petition.

7.However, the learned Additional Public Prosecutor submitted that the detenu is minor and he got married her and sexually assaulted her and thereby, the Police have invoked Protection Of Children from Sexual Offences Act, 2012. Secondly, he submitted that the question of taking consent of the minor does not have any impact in the eye of law as the minor's consent is no consent as per law. Therefore, the offences against Women and Children have to be viewed very seriously.

8.Further, the learned Additional Public Prosecutor submitted that merely because no bail petition filed by the detenu is pending, it does not prevent the detenu from filing bail application in future. Further, he submitted that the non-supply of some of the documents will not cause prejudice to the detenu. Further, he submitted that though various points have been argued by the learned Counsel for the Petitioner, the same would not vitiate the detention order and hence, he sought for dismissing the petition.

9.With regard to the ground raised by the learned Counsel appearing for the petitioner that the minor's consent has been obtained and they have loved each other and got married, this Court is of the view that the question of taking consent of the minor does not have any impact in the eye of law as the minor's consent is no consent as per law. Further, with regard to the contention of the learned Counsel for the petitioner that the copies of the similar case has not been supplied to the detenu and they are illegible, this Court is of the view that no prejudice would be caused to the detenu because of the non-supply of the similar case documents.

10.Further, with regard to the ground raised by the learned Counsel appearing for the petitioner that no bail petition filed by the detenu is pending, this Court is of the view that merely because the detenu has not filed bail petition, it does not prevent the detenu from filing bail petition in future and always the said right is available with the detenu and the Court may grant bail under the prevailing circumstances in future.

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."

11. 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."

12. 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.

13. Accordingly, this Petition is dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ay

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,
O/o.District Collector and District Magistrate,
Kallakurichi District,
Kallakurichi.
- 3.The Superintendent of Prison,
Central Prison,
Cuddalore District.
- 4.The Superintendent of Police,
O/o.Superintendent of Police,
Kallakurichi District,
Kallakurichi.
- 5.The Inspector of Police,
Elavanasurkottai Police Station,
Kallakurichi District.
- 6.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 7.The Public Prosecutor,
High Court of Madras,
Chennai.

A.SK(20.01.2021)

H.C.P.No.637 of 2020

WEB COPY