

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM

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

H.C.P. No. 817 of 2020

K. Alkabanu

..Petitioner/
Wife of the Detenue

Vs.

1. The State of Tamil Nadu
rep. by the Secretary to Government,
Home, Prohibition and Excise
Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai City, Vepery,
Chennai 600 007.
3. The Inspector of Police (L & O)
K4, Anna Nagar Police Station,
Anna Nagar, Chennai - 40.
4. The Superintendent,
Central Prison -I, Puzhal, Chennai.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Habeas Corpus to call for the records pertaining to Memo No. 221/BCDFGISSSV/2020 dated 30.04.2020 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the petitioner's husband Kadhar Moideen, Son of Mydeen Pichai, aged 48 years, now confined in the Central Prison, Puzhal, Chennai before the Hon'ble Court and set him at liberty.

For Petitioner :: Mr.C.K.M. Appaji

For Respondents:: Mr.R. Prathapkumar,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by N. KIRUBAKARAN,J.)

The matter is heard through videoconferencing.

2. The petitioner, who is the wife of the detenu, has filed this petition challenging the detention order dated 30.04.2020 passed by the 2nd respondent. The ground case is the only case against the detenu.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents, who would submit that the detenu along with other persons joined together and prevented the burial of Dr. Simon Hercules, who died due to Covid-19 in Velangadu Burial Ground, which is located near to their residence and attacked the officials who accompanied the body and prevented them from discharging their duty.

4. From the facts, it is clear that on 19/20.04.2020 at 12.10.a.m., midnight, the complainant along with the officials took the body of the deceased Dr. Simon Hercules to Velangadu burial ground, near Annai Sathya Nagar, to bury the body of the deceased and were digging a pit with the aid of a JCP machine. There is no dispute with regard to the death of Dr.Simon Hercules due to Covid-19. The burial ground is located adjoining Annai Sathya Nagar in which the petitioner's family is living. There is no clear picture about the disease Covid-19 and also the possibility of spreading of infection from the dead body if it is buried. Even the Doctors are unable to give a clear picture till date. The petitioner's husband and other persons may not be in a position to know whether Covid 19 infection would spread if a patient who died due to Covid-19 infection is buried near to their residence. After all, persons who are residing near the burial ground are slum dwellers and not educated. It may not be possible to decide about the mood of the mob when they join together, especially in a pandemic situation when there is no clear picture about the Covid infection. One cannot expect illiterate people to think to the level of educated persons, especially when they are grouped together. The pandemic situation has also added alarm. In view of the above position only, the petitioner's husband and other persons, out of fear of covid infection opposed the burial of the deceased.

5. Everybody knows that when people group together, there is possibility of physical attack and abuse and in spite of their objections, when the officials tried to bury the body, it seems these slum dwellers, out of anger, abused and assaulted the officials. This Court only considers the act of these persons was in the interest to safeguard themselves to see that Covid infection does not spread, especially, when nobody knows as to how Covid-19 would spread. Even the location, as explained by the learned counsel for the petitioner as well as Inspector of Police, Annai Sathya Nagar is located adjoining the burial ground. Even the houses have been built adjoining the burial ground compound walls. Therefore, the said act cannot be taken as a ground to detain those poor people under Goondas Act. No doubt, what they have done is not pardonable. For that, criminal cases have been registered and the same will take care of the misdeed or offence said to have been committed by them. In the opinion of this Court, the act of the petitioner and other persons, which had been done out of fear cannot be a ground for detaining them under Goondas Act.

6. Further, from the facts of the case, it is very clear that the problem created by the detenu and others is only due to the pandemic situation and it cannot be called deliberate or wilful and it is only to safeguard the lives of the entire residents as they felt that if the infected body is buried, it will affect them. Considering the same, it cannot be called as a perennial problem and there is no possibility of repeating the same in future also.

7. Besides, it is the contention of the learned counsel for the petitioner that the detention order is vitiated on the ground of non-supply of initial remand order to the detenu.

8. Though the learned Additional Public Prosecutor would respond to the said contention stating that the detenu was produced before the Judicial Magistrate for remand and in his presence only, the remand order was passed and therefore, there is no necessity for furnishing a copy of the initial remand order to the detenu, it is brought to the notice of this Court by the learned counsel for the petitioner that a Division Bench of this Court, in the judgment dated 05.09.2007, rendered in Ravi @ Ravichandran @ Ravikumar V. The Secretary to Government and another (H.C.P. No. 480 of 2007) has relied on the judgment of the Honourable Apex Court, in Pownammal V. State of Tamil Nadu (AIR 1999 SC 618) wherein, the Honourable Apex Court held thus:

"15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenu could not

understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenu need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenu. "

9. In view of the settled position of law that non-furnishing of the copy of the order of remand vitiates the detention order, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 30.04.2020 in Memo No. 221/BCDFGISSSV/2020 is hereby set aside.

10. The detenu, viz., Kadhar Moideen, Son of Mydeen Pichai, aged 48 years, now confined in the Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise
Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai City, Vepery,
Chennai 600 007.
3. The Inspector of Police (L & O)
K4, Anna Nagar Police Station,
Anna Nagar, Chennai - 40.
4. The Superintendent,
Central Prison -I, Puzhal, Chennai.
5. The Joint Secretary to Government,
Public Law & Order, High Court, Madras.

6. The Public Prosecutor,
High Court, Chennai.

H.C.P. No. 817 of 2020

VG-II (CO)
RV (04/11/2020)