

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
H.C.P.No. 2719 of 2019

S.Manohar

...Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.

2.The Commissioner of Police,
Vepery,
Chennai 600 007.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records pertaining to the Order of Detention in Memo No.698/BCDFGISSSV/2019 dated 18.10.2019 passed by the 2nd respondent, under Section 3 (1) of the Tamil Nadu Act 14 of 1982, in pursuant to which the Petitioner's brother, namely, Sivaraman, Son of Srinivasan has been detained in the Central Prison II, at Puzhal, Chennai and set aside the same and direct the respondents herein to set the detenu at liberty forthwith.

For Petitioner : Mr.G.B.Shiva Bharathy.

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 is heard through "Video Conferencing".

2.The brother of the detenu has challenged the detention order passed against his brother branding him as 'Sexual Offender' under Section 2 (ggg) of the Tamil Nadu Act 14 of 1982

by the second respondent by order dated 18.10.2019 in Memo No.698/BCDFGISSSV/2019.

3.The case of the prosecution is that the detenu, aged about 48 years old is said to have sexually assaulted the 11 years old minor girl child who is his neighbour, by calling her to his house, on the pretext of saying to the minor child that her elder brother is in his house. In this regard, a case was registered in Crime No. 9 of 2019 under Sections 376, 366(a) and 506(i) of the India Penal Code and Section 5(m) read with 6 of the Protection of Children from Sexual Offences Act, 2012. Based on the said case, the detention order has been passed.

4.Heard Mr.G.B.Shiva Bharathy, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

5.The learned Counsel appearing for the Petitioner submitted that similar case referred in the detention order is not similar in nature. Moreover, there is no bail petition filed by the detenu and therefore, imminent possibility of the detenu coming out on bail is ruled out. Hence, there is non-application of mind on the part of the detaining authority in passing the detention order. Further, he submitted that the detention order has not been served upon the detenu in time and therefore, non-supply of detention order in time vitiates the detention order itself. The learned Counsel for the petitioner also submitted that in the documents which have been supplied to the detenu, the detenu's father name has been wrongly mentioned as Annadurai whereas, his father name is Srinivasan. Hence, the detention order is vitiated and seeks for allowing this petition.

6.However, the learned Additional Public Prosecutor appearing for the respondents would submit that the delay in serving the detention order, is due to the administrative works of the detaining authority and the said delay is neither wilful nor wanton. Secondly, he submitted that the imminent possibility of coming out on bail 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'. Thirdly, he would submit that typographical error in any way is not going to cause prejudice to the Petitioner's case and he seeks for dismissal of this petition.

7.With regard to the ground raised by the learned Counsel for the petitioner that similar case is not similar in nature and the imminent possibility of detenu coming out on bail is ruled out, when there is no bail petition 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 to the detenu. Further, as rightly submitted by the learned Additional Public Prosecutor, the imminent possibility of the detenu coming out on bail has to be decided based on the gravity of the offence and the facts of the case 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' and the relevant paragraph 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 detenues 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 detenues, the detaining authority satisfied itself as to the detenues' 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 detenues 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."

8. With regard to the ground raised by the learned Counsel for the petitioner that the detention order has not been served in time, the learned Additional Public Prosecutor submitted that the delay is not deliberate and it has been occurred due to various administrative works vested with the detaining authority. Hence, the said contention of the petitioner is liable to be set aside. Further, with regard to the other ground raised by the learned Counsel for the petitioner that the

father name of the detenu has been wrongly mentioned as 'Annadurai', as rightly submitted by the learned Additional Public Prosecutor, the typographical error will not cause any prejudice to the case of the petitioner and the said ground is also liable to be rejected.

9. Further, as laid down in 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", once the 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 Dimple 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."

10.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.

11.Considering the facts and circumstances of this case, this petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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To

- 1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.
- 2.The Commissioner of Police,
Vepery,
Chennai 600 007.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

सत्यमेव जयते

H.C.P.No. 2719 of 2019

CP(CO)
KKV/14/12/2020

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