



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

H.C.P. (MD) No.1355 of 2019

Meera

... Petitioner/Mother of the detenu

-vs-

1.The State of Tamil Nadu,represented by
The Additional Chief Secretaru to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collectorate,
Dindigul District,
Dindigul.

3.The Superintendent,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records, in Detention Order No.76/2019 dated 8.12.2019 on the file of the second respondent herein and to set aside the same as illegal and direct the resp0ondents to produce the body or person of the Petitioner's son namely Mohammed Hussain, son of Mohammed Mustafa, male, aged about 26 years, who is detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents:Mr.K.Dinesh Babu,
Additional Public Prosecutor



O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

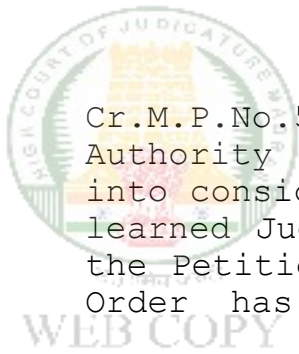
This habeas corpus petition has been filed challenging the Detention Order passed by the second respondent in Detention Order No.76/2019, dated 8.12.2019, wherein the detenu namely Mohammed Mustafa has been detained branding him as ''Goonda''.

2.Mr.K.A.S.Prabhu, learned counsel appearing for the Petitioner would submit that the Detention Order impugned in this case is liable to be quashed on the following grounds: (1)there was an inordinate and unexplained delay in disposing the representation of the detenu (2)the Detaining Authority has not furnished the similar case details while reaching the subjective satisfaction(3) there is a delay of 61 days in passing the detention order from the date of arrest of the detenu (4)When the detenu has not moved any bail petition in respect of the first and third adverse case, there is no possibility of detenu coming out on bail, hence, the subjective satisfaction arrived at by the detaining authority lacks application of mind.

3.The learned Additional Public Prosecutor appearing for the respondents, while reiterating the averments made in the counter affidavit filed by the second respondent, would argue that the Detention Order has been passed by the Detaining Authority after having satisfied with the cogent and relevant materials produced by the Sponsoring Authority. According to the learned Additional Public Prosecutor, the four grounds raised by the learned counsel for the Petitioner have no merit and prayed for dismissal of the Habeas Corpus Petition.

4.With regard to the first ground, it is seen that the detenu submitted a representation on 18.12.2019 and the performa circulated by the learned Additional Public Prosecutor shows that there was a delay of 4 days in disposing the representation, that too, there are two intervening holidays. Hence, we are of the view that there is only a reasonable delay in disposing the representation.

5.A perusal of the Detention Order at Paragraph 5 would show that the detenu involved in three criminal cases. One registered under Sections 454, 457 and 380 of IPC in Crime No.404 of 2017, on the file of Dindigul Town South Police Station, in Crime No.602 of 2019 registered for the same offence by the Dindigul Town North Police Station and in Crime No.107 of 2019 for the offence punishable under Sections 457 and 380 of IPC by the Pollachi Town South Police Station. In the third case, he was granted bail by the learned Judicial Magistrate No.II, Pollachi in



Cr.M.P.No.5712 of 2019 on 27.8.2019. The second respondent/Detaining Authority while reaching the subjective satisfaction had taken into consideration the bail granted in Crime No.107 of 2019 by the learned Judicial Magistrate No.II, Pollachi. Hence the contention of the Petitioner that no similar case details found in the Detention Order has no merit.

6.The Honourable Apex Court in the judgment reported in ***Olia Mallick vs. State of West Bengal [1974 (1) SCC 594]***, has held that the even the detention order passed after six months will not vitiate the order of detention. It is pertinent to note that in ***Union of India, through the Joint Secretary(COFEPOSA), Ministry of Finance, New Delhi .vs. Ankit Ashok Jalan reported in 2019 SCC Online SC 1498***, the Honourable Apex Court held that there need not be any bail petition pending on the date of passing of the Detention Order which reads as follows:

"45.In the case of Noor Salman Makani (supra), a submission was made regarding nonapplication of mind by the Detaining Authority with regard to the circumstance that the detenu was in jail and a mere bald statement that the possibility that the detenu was likely to be released on bail cannot be ruled out is not enough and it only shows that there was no proper application of mind. This Court did not accept the said submission and has observed that nothing more could have been said by the Detaining Authority in this context. It is required to be noted that in the said decision the apprehension of the Detaining Authority came to be true as the detenu was released on bail. This Court refused to set aside the detention order on the aforesaid ground. It appears that the detenus were waiting for the setting aside of the detention orders on the ground that they are in custody and that there is no real apprehension that the detenus are likely to be released on bail.

46.As discussed earlier, the detention orders show the application of mind by the Detaining Authority based on the material available on record, facts and circumstances of the case, nature of activities and propensity of the detenus indulging in such activities. Therefore, in the facts and circumstances of the case, the High Court has erred in setting aside the detention orders on the ground stated hereinabove, namely, that there is a clear lapse and failure on the part of the Detaining Authority, to examine and consider the germane and relevant question relating to the imminent possibility of the detenus being granted bail, while recording its subjective satisfaction and passing the detention orders.



47. A Constitution Bench of this Court in the case of Rameshwar Shaw (supra) has observed and held that the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. It is further observed that "therefore the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case. Following the aforesaid decision of this Court, in the subsequent decision, in the case of N. Meera Rani v. Government of T.N. (1989) 4 SCC 418, in para 22, this Court observed and held as under:

"...Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position."

48. Now so far as the reliance placed upon the decisions of this Court in the cases of Rekha (supra) and T.V. Sravanan (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 shall not be of any assistance to the detenus and/or, as such, the same shall not be 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.

7.It is to be noted that the Honourable Apex Court in number of decisions have categorically held that the subjective satisfaction arrived at by the detaining authority cannot be lightly be interfered with by the High Court while considering the detention order. Hence, we are of the view that no ground is made out to quash the order of Detention.

8.In such view of the matter, the Habeas Corpus Petition is dismissed as devoid of merits.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

vsn



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Additional Chief Secretaru to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
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- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collectorate,
Dindigul District,
Dindigul.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

H.C.P. (MD) No.1355 of 2019

09.11.2020

SR(CO)
NR (04/12/2020) 6P : 5C