

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.269 of 2024

Mohammed Musthapa

... Petitioner

Vs.

State of Tamil Nadu Rep. by

1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai – 600 009

2.The Commissioner of Police
Greater Chennai
Chennai District

3.The Superintendent of Prison
Central Prison Puzhal
Chennai

4.The Inspector of Police
D-3, Ice House Police Station
Chennai District
Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the 2nd respondent in 32/BCDFGISSSV/2024 dated 13.10.2024 against the petitioner's son in law Sheik Mohamed Madhar, S/o.Shahul Hameed, Male, aged 28 years, now confined in Chennai Prison Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Karthick

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
Assisted by Mr.C. Aravind

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The petitioner herein, who is the father-in-law of the detenu viz. Thiru.Sheik Mohamed Madhar, aged about 28 years, S/o.Shahul Hameed, has come forward with this petition challenging the detention order passed by the second respondent dated 13.01.2024 slapped on his son-in-law, branding him as "DRUG OFFENDER" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand

Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. The ground raised by the learned counsel for the petitioner challenging the order of detention is that though the Government had passed the order dated 13.10.2023 in G.O.(D) No.274, Home, Prohibition and Excise (XVI) Department, empowering the District Magistrate and District Collector to pass the detention order, the detention order came to be passed on 13.01.2024 after a period of three months and therefore, the detention order itself is vitiated.

4. Under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [hereinafter called as Tamil Nadu Act 14 of 1982], the power to make an order to detain the

person have been provided for. Sub Section 2 of Section 3 of the Tamil Nadu Act 14 of 1982, provides that having regard to the circumstances prevailing, or likely to prevail in any area within the jurisdiction of the District Magistrate or Commissioner of Police and the State Government is satisfied that it is necessary so to do, they may pass an order in writing, empowering the District Magistrate to pass the order of detention. The Proviso to Sub Section 2 of Section 3 of the Tamil Nadu Act 14 of 1982, states that such a detention order shall be passed within a period of three months from the date on which the delegation order was passed. The Proviso further states that in case, the Government is satisfied that the period of three months requires to be extended, the same shall be done from time to time by any period not exceeding three months at any one time.

5. A perusal of the grounds of detention would reveal that though the order dated 13.10.2023 in G.O.(D) No.274, empowering the District Magistrate to pass the detention order was placed before the Detaining Authority, the subsequent order if any, arising out the delegation order and extending the period, has not been placed before the Detaining Authority. The G.O.(D) No.274, dated 13.10.2023 was valid only till 12.10.2024.

Apparently, the detention order passed after a period of three months from the date of empowering the District Magistrate, cannot be legally sustainable and on this ground, the detention order is liable to be quashed.

6. Accordingly, for the aforesaid reasons, the detention order passed by the second respondent on 13.01.2024 in BCDFGISSSV No.32/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz. Thiru.Sheik Mohamed Madhar, aged 28 years, S/o.Shahul Hameed, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]

13.06.2024

kas

Index: Yes/No

Neutral Citation: Yes/No

To

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