

(2009) 03 MAD CK 0039

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 637 of 2008

Sharmila

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 8

Citation : (2009) 03 MAD CK 0039

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; C. Daniel Manoharan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the second respondent dated 02.08.2008 made in H.S.(M) CONFDL.No.37 of

2008, whereby the petitioner's husband by name Gnanam was termed as a "Drug Offender" and was detained under the Tamil Nadu Act 14 of 1982.

2. The petitioner is present and she has made her submissions. The affidavit in support of the application is perused.

3. The petitioner's husband Gnanam, pursuant to the recommendations made by the sponsoring authority stating that three adverse cases were

registered against him viz., Crime No. 539 of 2007 u/s 8(c) r/w 20(b)(ii)(B) of the NDPS Act, Crime Nos. 817 and 927 of 2007 under the same

provisions and one ground case registered in Crime No. 491 of 2008 under the same provisions by the South Police Station, Thoothukudi and

after scrutiny of the materials, the detaining authority took the view that the

detenu has gone to the extent of causing danger to the lives of innocent people and posed a threat to the public health and thus his activities were in a manner prejudicial to the maintenance of public health and hence he was to be termed as "Drug Offender" as defined under the Tamil Nadu Act 14 of 1982 and he was to be detained and accordingly he made the order dated 02.08.2008, which is the subject matter of challenge before this Court.

4. The petitioner reiterates the grounds as found in the affidavit. Challenging the order, inter-alia, she stated that a representation was made on 15.09.2008; the same was received on 18.09.2008; though remarks were called for on 19.09.2008 and reminder was also sent on 03.10.2008, remarks were received from the sponsoring authority only on 06.10.2008 and there is a delay of 17 days, which remained unexplained, which has caused prejudice to the interest of the detenu. Added further, the reading of the order under challenge would clearly indicate that the detaining authority has stated that there was a real possibility of the detenu coming out of bail, but it is pertinent to note that no bail application was filed or pending at that time. Thus, without any material at all on record, the detaining officer has inferred that the detenu was likely to be released on bail. Hence, the order suffers on both the grounds as stated above and the order under challenge has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the submissions made by the petitioner and paid anxious consideration on the submissions made.

6. Concededly, the husband of the petitioner one Gnanam was detained under the Tamil Nadu Act 14 of 1982 terming him as "Drug Offender" pursuant to the recommendations made by the sponsoring authority alleging that the detenu was involved in three adverse cases and one ground case, all under the provisions of the NDPS Act and by the same Police Station. But, the detaining authority has recorded that it is satisfied by the materials available to term the detenu as a "Drug Offender" as defined under the Act and he was to be detained and an order of detention has got to be made since his activities were in a manner prejudicial to the maintenance of public health.

7. On scrutiny of the order and when viewed from the grounds of attack made by

the petitioner, the Court is of the considered opinion that the order under challenge has to be set aside. A perusal of the order would clearly indicate that the detaining authority has stated that there was real possibility of the detenu coming out of bail. The detenu was arrested on 16.07.2008. Following the recommendations made by the sponsoring authority, the order under challenge came to be passed on 02.08.2008 within a short span of two weeks. It is not the case of the State that there was any bail application filed or pending before the Court of criminal law. Thus, it would be quite clear that on the date when the materials were considered by the detaining authority no bail application was pending before any Court of criminal law. But the detaining authority has observed in his order that there was a real possibility of detenu coming out of bail. It is well settled proposition of law that there must be cogent materials before the detaining officer to make an inference that the detenu was likely to be released on bail and such inference should be drawn from the materials on record and it should not be ipse-dixit of the officer passing the Detention Order. In the instant case, the detenu has neither filed any bail application nor bail application is pending before the Court of criminal law. Thus it would be quite clear that the inference drawn by the officer that there was real possibility of the detenu coming out of bail was not based on any materials on record.

8. Adding circumstances in favour of the detenu, there was undue delay that was caused in consideration of the representation made. From the materials supplied by the State, it could be quite clear that the representation was made on 15.09.2008; the same was received on 18.09.2008; the remarks were called on 19.09.2008 and the reminder was also sent to the sponsoring authority on 03.10.2008, but the remarks were received only on 06.10.2008. All would clearly indicate that there was an intervening delay of 17 days.

9. The learned Additional Public Prosecutor would submit that there was six days leave in between the interregnum period. Even assuming to be so, there were delay of 11 days, which remain unexplained. Such a huge and inordinate delay which remain unexplained, in the considered opinion of the Court, the delay would have caused prejudice to the detenu and that itself would suffice to set aside the order dated under challenge.

10. This was fortified by the earlier decision made by this Court in 2006-1-L.W. (Crl.) 369 (Rajeswari v. The Secretary to Government,

Prohibition and Excise Department and Anr.) by their Lordships Justice P. Sathasivam and Justice J.A.K. Sampathkumar. Following the same,

apart from those two grounds, in the considered opinion of the Court it would be suffice to set aside the order under challenge. Hence, this Court

has made undone by upsetting the order under challenge.

11. Accordingly, the Habeas Corpus Petition is allowed and the order of detention under challenge is set aside. The detenu is directed to be set at

liberty forthwith unless his presence is required in connection with any other case.