

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER  
and  
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1003 of 2017

Mr. R. Elamparuthi .... Petitioner/father of the  
detenu

-vs-

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The Commissioner of Police,  
Greater Chennai Police,  
Office of the Commissioner of Police,  
Chennai 600007. .... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the impugned detention order made in Memo No.304/BCDFGISSSV/2017 dated 25.5.2017 on the file of the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu, Mano @ Manavalan M/A 23 Son of Elamparuthi, now confined at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner: Mr.A. Saranraj  
For Respondents: Mr.V.M.R. Rajentren  
Additional Public Prosecutor

O R D E R

[Order of the Court was made by N. SATHISH KUMAR, J.]

The petitioner is the father of the detenu, namely, Mano @ Manavalan son of Illamparithi, Male, aged about 23 years. The detenu has been detained by the second respondent by his order in No.304/BCDFGISSSV/2017 dated 25.05.2017, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner would submit that when there was bail application pending in the ground case as well as in the adverse case, the detaining authority passed the detention order stating reason that the detenu is likely to come out on bail. The learned counsel would further submit that the detenu is already in judicial custody as an under trial prisoner and imminent possibility of his release on bail is not enough for the detaining authority to pass the impugned order. Further, the form of order requesting the attendance of a prisoner to answer a charge placed in page No.139 of the booklet was not properly translated. So, the above are squarely show that there is non-application of mind on the part of the detaining authority in passing the order of detention.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in the ground case and adverse case bail applications are pending. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. When a bail application is pending, there is no presumption that the detenu would come out on bail. No cogent materials are available before the detaining authority to apprehend that the detenu is likely to get bail in the ground case and there is imminent possibility of the detenu to come out on bail in the said case. Thus, the detention order is vitiated on the above sole ground and the same is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.304/BCDFGISSSV/2017 dated 25.05.2017, passed by the second respondent is set aside. The

detenu, namely, Mano @ Manavalan S/o Illamparithi, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ggs

To:

- 1.The Secretary to Government, Home, Prohibition and Excise Department,  
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police, Egmore, Chennai 600008.
- 3.The Superintendent, Central Prison, Puzhal.
- 4.The Joint Secretary to Government  
Public Law and order  
Secretariat Fort St.George  
Chennai-9
5. The Public Prosecutor, High Court, Madras.

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