

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM:

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

H.C.P. No.1025 of 2017

Devaki ... Petitioner

-vs-

1. The Secretary to the Government
Prohibition and Excise Department (Home)
Secretariat, Chennai - 600 009
- 2.The District Collector &
District Magistrate,
Vellore District, Vellore - 9 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent 11.06.2017 in C3.D.O.No.53 of 2017 against the petitioner son Saravanakumar, Male aged 32 years, S/o. Ganapathy, who is confined at Central Prison Vellore, and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr. D.Balaji

For Respondents: Mr. V.M.R.Rajentran
Additional Public Prosecutor

O R D E R

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

The petitioner is the mother of the detenu, namely, Saravanakumar, S/o. Ganapathi, Male, aged about 32 years. The detenu has been detained by the 2nd respondent by his order in C3.D.O.No.53 of 2017 dated 11.06.2017, holding him to be a "Bootlegger", as contemplated under 2(b) 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. The learned counsel for the petitioner would submit that the seized contraband was sent to Court after a delay of two days. He would further submit that there is no detail in the petition as to whether the detenu was in judicial custody. Learned counsel has also placed reliance on the orders dated 11.7.2017 and 07.8.2006 passed by this Court in HCP.No.517 of 2007 and 497 of 2006 respectively to substantiate his contention.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit 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.

5. In the order of detention, the Detaining Authority has stated that the detenu was produced before the Judicial Magistrate, Sholinghur on 18.5.2017. However, Form 95 would reveal that the samples collected on 18.5.2017 were sent to Court only on 20.5.2017. The delay in sending the samples to the Court has not been explained by the detaining authority. That apart, there is no materials to substantiate that the detenu was in possession of the alleged contraband, which itself shows that the order of detention was passed mechanically without application of mind.

6. Considering the aforesaid facts and in the light of the orders dated 07.8.2006 and 11.07.2007 passed by this Court in HCP.Nos. 497 of 2006 and 517 of 2007 respectively, we are of the view that the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3.D.O.No.53 of 2017, dated 11.06.2017, passed by the 2nd respondent is set aside. The detenu, namely, Saravanakumar, son of Ganapathi, aged about 32 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 VIII)

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary
Prohibition and Excise Department (Home)
Fort. St.George, Chennai - 600 009

2.The District Collector &
District Magistrate,
Vellore District, Vellore - 9

3. The Superintendent,
Central Prison, Vellore

4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George, Ch-9

5.The Additional Public Prosecutor,
Madras High Court,
Madras

H.C.P.No. 1025 of 2017

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ss(12/10/2017)



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