

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1035 of 2017
and CrI.M.P.No.15251 of 2017

Kuppan @ Sathishkumar ... Petitioner/Detenu
Vs.

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

2.The District Collector and 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, to call for the records pertaining to the order of detention passed by the 2nd respondent herein dated 02.05.2017 made in C3/D.O.No.41/2017 against the detenu Thiru.Kuppan @ Sathishkumar, male, aged 27 years, S/o.Palani residing at No.6/2, Solapuri Amman Koil Street, Thottapalayam, Vellore, Vellore District who is now confined in Central Prison, Cuddalore, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Vijayaraghavan

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

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

CrI.M.P.No.15251 of 2017
in H.C.P.No.1035 of 2017

1. The captioned petition is filed, in view of the fact that the petitioner/detenu has been in incarceration since 14.12.2017.

2. We are told by Mr.Rajentran, learned Additional Public Prosecutor, that to date, charge sheet has not been filed in Crime No.48 of 2017.

3. Accordingly. the petition is allowed. With the consent of the counsel for the petitioner and the learned Additional Public Prosecutor, the main petition is taken up for hearing.

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4. This is a petition filed against the detention order dated 02.05.2017,

5. A perusal of the detention order would show that there are two (2) cases registered against the detenu. These being : Crime No.48 of 2017 and Crime No.391 of 2013. In respect of the first case, the detenu has been booked under Sections 302 of the I.P.C. @ 147, 148, 294(b), 120(B), 302 of the IPC. In respect of the second case, the detenu has been booked under Sections 147, 148, 341, 392 and 506 (ii) of the IPC.

5.1.We may indicate herein that Crime No.391 of 2013 has been referred to by the Detaining Authority as "similar case" and not adverse case, though, the name of the accused indicated against Crime No.391 of 2013 is the same as that of the detenu.

5.2. In these circumstances, we have asked Mr.R.Jayakumar, the Investigating Officer, as to whether Crime No.391 of 2013, pertains to the detenu. The Investigating Officer has confirmed that Crime No.391 of 2013 also pertains to the detenu.

6. Moving on the narrative, the record shows that the detenu in Crime No.48 of 2017 surrendered on 14.02.2017. The record also shows that in Crime No.48 of 2017, the detenu had not filed any bail application till the date of passing of the impugned detention order. The Detaining Authority, however, taking into account the fact that in Crime No.391 of 2013, bail had been obtained on 10.12.2013, came to the conclusion that there was a real possibility of the detenu being enlarged on bail in Crime No.48 of 2017 as well.

7. Given the aforesaid circumstances, in our opinion, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested formally on 14.02.2017, the impugned detention order was passed on 02.05.2017. Notice in this petition was issued as far back as on 23.06.2017. Despite notice having been issued, no counter affidavit has been filed on behalf of the State. Resultantly, the enormous delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, the date when the impugned order was passed, the detenu had not

moved for bail in Crime No.48 of 2017. Therefore, the Detaining Authority's conclusion that the detenu would be released on bail, in our view, is flawed. The reason supplied by the Detaining Authority that because bail had been obtained in Crime No.391 of 2013 and therefore, the detenu would obtain bail in Crime No.48 of 2017 is completely erroneous. Bails by Court are granted not because of parity in the provisions, but, by looking at various other factors which includes the gravity of offences, the ability of the detenu to suborn witnesses, and the possibility of the detenu fleeing from justice.

8. Thus for the foregoing reasons, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.41/2017, dated 02.05.2017, passed by the second respondent is set aside. The detenu, namely, Kuppan @ Sathishkumar, S/o.Palani, male, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with another 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/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vsm/pam

To

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

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

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

4.The Superintendent,
Central Prison,
Cuddalore.

[In duplicate for communication to the detenu]

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

+1cc to Mr.T.Vijayaraghavan, Advocate in sr.no.89717

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NR 15/12/2017



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