

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.10.2017

Coram

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

H.C.P.No.1139 of 2017

V.Praveena

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By its Secretary to Govt.,
Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.

2.The Commissioner of Police/
Detaining Authority,
Tiruppur City, Tiruppur.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling upon the production of the records passed by the second respondent dated 24.05.2017 in C.No.02/G/IS/2017 against the detenu Vijayakumar, Male aged 23 years, S/o.Easwaran, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.D.Lakshmipathy

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

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J)

The petitioner is the wife of the detenu, namely, VijayaKumar, Son of Easwaran, male aged about 23 years. The detenu has been detained by the second respondent by his order in C.No.02/G/IS/2017 dated 24.05.2017, holding him to be a "Goonda", as contemplated under 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. The learned counsel for the petitioner made only one submission that the detention order has been passed by the detaining authority without application of mind inasmuch as the two bail applications filed in respect of the third adverse case were dismissed and the third bail application is pending consideration, the detaining authority arrived at the subjective satisfaction that the detenu is likely to be released on bail, by relying on a similar case and hence, the order vitiates on the said ground.

4. The learned Additional Public Prosecutor 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. On a perusal of the impugned order of detention, we find that admittedly, two of the bail applications filed by the detenu in the third adverse case, viz., C.M.P.Nos.257/2017 and 292/2017, were dismissed on 11.05.2017 and 18.05.2017 and the third application for bail, i.e., C.M.P.No. 286/2017, is pending on the date of passing of the detention order. Therefore, subjective satisfaction arrived at by the detaining authority that the detenu is likely to be released on the ground that in similar applications, bail was granted by the Courts in connection with some other accused, exhibits the non-application of mind. On this ground, the detention order is liable to be quashed.

6. That apart, the detenu was arrested on 15.03.2017, whereas the detention order was passed on 24.05.2017, with inordinate delay, which remains unexplained.

7. Furthermore, despite notice being ordered in this petition on 05.07.2017, no counter-affidavit has been placed before this Court to date.

8. For all these reasons, we are inclined to allow this habeas corpus petition.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.02/G/IS/2017 dated 24.05.2017 passed by the second respondent is set aside. The detenu, namely, VijayaKumar, Son of Easwaran, male 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.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sra
To

1. The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariate, Fort St. George,
Chennai-9.
2. The Commissioner of Police/,
Detaining Authority,
Tiruppur City.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
Madras High Court,
Chennai.

सत्यमेव जयते

H.C.P.No.1139 of 2017

SP(27/10/2017)

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