

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM:

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

H.C.P. No.1157 of 2017

Ponnusamy

... Petitioner/Father
of the Detenu

-vs-

1. Government of Tamil Nadu
Represented by its Secretary
Home Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009

2. The Commissioner of Police
Greater Chennai,
Chennai City Police,
Vepery, Chennai.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention order vide BCDFGISSSV No.259 of 2017 dated 11.5.2017 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of Thiru.P.Muthukumar S/o Ponnusamy, M/A 33 years, the detenu now confined in Central Prison-II, Puzhal Chennai, before this court and set him at liberty.

For Petitioner : Mr. Jugal Kumar

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 father of the detenu, namely, Muthukumar, S/o. Ponnusamy, Male, aged about 33 years. The

detenu has been detained by the 2nd respondent by his order in No.259/BCDFGISSSV/2017 dated 11.05.2017, 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 would submit that the detaining authority has failed to see that the detenu is not a goonda and he has never acted in any manner prejudicial to the maintenance of the public order and he has no bad antecedents in the past. The learned counsel for the petitioner would further submit that only on the basis of single incident, without proper application of mind the detaining authority has passed the order in a hurried and in a hasty manner. There is no material to show that the detenu had indulged in such unlawful and illegal activities.

4. 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.

5. 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 Cr.No.656 of 2016 of Kodungaiyur Police station, bail was granted by the Principal Sessions Judge, Chennai and the detaining authority inferred that there is a possibility of coming out on bail in Cr.No.410 of 2017 and Cr.No.584 of 2017 by filing bail application, would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that when a bail application is pending then it is only a logical conclusion that there is likelihood of the person in custody would be released on bail. Further, there is no counter filed in this case since the notice taken by the learned Additional Public Prosecutor on 07.07.2017. In such view of the matter, the impugned detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.259/BCDFGISSSV/2017 dated 11.05.2017, passed by the 2nd respondent is set aside. The

detenu, namely, Thiru. Muthukumar, son of Ponnusamy, aged about 33 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-V)

True Copy

Sub-Assistant Registrar

ggs

To:

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

सत्यमेव जयते

H.C.P.No. 1157 of 2017

ARV(CO)
sp(25/10/2017)

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