

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2017

Coram

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

H.C.P.No.1218 of 2017

Panchali

... Petitioner

Vs.

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

2.The District Collector and District
Magistrate, Salem District.

3.The Superintendent,
Central Prison, Salem 7. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in C.M.P.No.23/"Goonda"/C2/2017, dated 16.04.2017 passed by the 2nd respondent against the detenu, Raja, S/o.Murugan, aged 26 years, now confined in Central Prison, Salem and to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mrs.Sumithra Vasudevan

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

* * * * *

O R D E R

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

1.By this petition, challenge is laid to the order of detention dated 16.04.2017 passed in C.M.P.No.23/Goonda/C2/2017 by the second respondent in exercise of his powers conferred

under Section 3(1) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short 'Tamil Nadu Act 14 of 1982'). The said detention order has been passed under Section 2 (f) of the Tamil Nadu Act 14 of 1982, branding the detenu as a "Goonda".

2.The petitioner, who is the mother of the detenu, has assailed the order of detention on the ground that it has been passed without application of mind and contrary to law.

3.The detaining authority has noted in the impugned order three adverse cases (Cr.Nos.64/2014, 137/2014 and 332/2015) pertaining to the detenu. Insofar as the subject case is concerned, which has led to the detention of the detenu under the provisions of Tamil Nadu Act 14 of 1982, the same has been registered as Cr.No.553/2016. In so far as this case is concerned, the detenu is accused of having committed an offence under Section 392 of the Indian Penal Code.

4.It is argued on behalf of the learned counsel for the petitioner that there has been a total non-application of mind by the detaining authority insofar as there is no possibility of the detenu being enlarged on bail. Our attention, in this behalf, has been drawn to paragraph 5 of the impugned order.

5.Learned Additional Public Prosecutor, however, relies upon the detention order to resist the petition.

6.We have perused the detention order. According to us, a perusal of paragraph 5 of the detention order would show that in three cases, i.e., Cr.Nos.64/2014, 137/2014 and 553/2016, the detenu, in the first instance, stood remanded to judicial custody till 09.01.2017. Even according to the detaining authority, the remand was extended till 17.04.2017.

7.To be noted, even though the detenu obtained bail orders in Cr.No.64/2014 and 137/2014, vide orders dated 23.03.2017 (Cr1.M.P.Nos.893/2017 and 894/2017), he was not set free, as he was detained by virtue of the impugned order. It appears that the detenu had applied for bail in Cr.No.553/2016, which was dismissed on 15.02.2017. This, evidently, led the detenu to re-apply for bail, which, even according to the detaining authority, is pending adjudication.

8.Interestingly, the detaining authority is apprehensive of the detenu being released on bail, amongst other reasons, for the reason that in a similar case, bail was granted to the

concerned accused, on 07.08.2015 (Crl.M.P.No.1503/2015). The detenu, as per record available with us, has been in custody since 26.12.2016. The fact that, in similar case, bail was granted on 07.08.2015, to our minds, could have had no bearing on the matter. As noted above, the detenu could not avail of the benefit of bail granted in Cr.Nos.64/2014 and 137/2014, as he was detained by virtue of the impugned order.

9.Furthermore, as noticed above, his bail petition in Cr.No.553/2016, was dismissed on 15.02.2017 (Crl.M.P.No.496/2017) and the other application filed in that behalf is still pending adjudication.

10.We may also note that notice in this petition was ordered on 12.07.2017, despite which, no counter-affidavit has been filed, resultantlly, the pleas taken by the petitioner have gone un-rebutted.

11.For all these reasons, we are inclined to quash the impugned order of detention and allow this Habeas Corpus Petition.

12.In the result, the Habeas Corpus Petition is allowed and the order of detention dated 16.04.2017 passed in C.M.P.No.23/Goonda/C2/2017, by the second respondent is set aside. The detenu, namely, Raja, Son of Murugan, male aged about 26 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(CO)

//True Copy//

Sub Assistant Registrar

To

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

2.The District Collector and District
Magistrate, Salem District.

3.The Superintendent,
Central Prison, Salem.
(In Duplicate for communication to detenu)

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

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

H.C.P.No.1218 of 2017

ss(31/10/2017)



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