

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2017

Coram

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

H.C.P.No.1323 of 2017

S.Saravanan

... Petitioner

Vs.

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

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

... 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 pertaining to the detention order dated 12.05.2017 passed by the second respondent in No.C3/D.O/26/2017 against the detenu Panjali, W/o.Sekar, aged about 55 years and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set her at liberty.

For Petitioner : Ms.Shase for Mr.S.Vijayakumar

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)

1.This is a petition challenging the order of detention dated 12.05.2017 passed in C3/D.O/26/2017 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 (b) of the Tamil Nadu Act 14 of 1982, branding the detainee as a "Bootlegger".

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

3.In so far as the case in respect of which the detainee stands detained is concerned, the detention order reveals that a raid was conducted on 02.05.2017 when the detainee was found in possession of two mud pots containing poisonous arrack. It is also suggested that the detainee was produced before the concerned Court on the very same day and remanded to judicial custody till 16.05.2017. There is also a reference to the fact that samples were taken of the purported poisonous arrack found in possession of the detainee to the Regional Forensic Science Laboratory, Villupuram.

4.Learned counsel for the petitioner says that no order of remand has been produced. It is also submitted that the samples, if at all sent to the Regional Forensic Science Laboratory, Villupuram, were sent late and thus, rendered the entire exercise illegal.

5.Notice in this petition was issued as far back as on 25.07.2017. To date, no counter-affidavit has been filed by the State. We have asked Mr.V.M.R.Rajentran, learned Additional Public Prosecutor, as to whether the remand order is on record. Mr.Rajentran has fairly conceded that the remand order is not on record. Furthermore, learned Additional Public Prosecutor also fairly concedes that the report of the Regional Forensic Science Laboratory, Villupuram, does show that the samples taken from the arrack confiscated from the detainee were sent for analysis only on 05.05.2017.

6.We also find, on perusal of the detention order, that even according to the detaining authority, in the ground case, i.e. Cr.No.276 of 2017, the detainee had filed a bail application with the Vacation Sessions Court, Cuddalore, which was numbered as Cr1.M.P.No.13/2017, which was, thereafter, dismissed on 05.05.2017. The detention order also adverts to the fact that another bail application was referred (Cr1.M.P.No.149/2017), which is pending. There is also a reference to the case of another person in the detention order. Qua him, bail apparently has been granted by the District Sessions Judge, Cuddalore.

7.Having regard to the fact that the remand order is not placed on record and that the samples were presented late, according to us, the detention order is impregnated with

illegality, violating the detenu's right under Article 21 of the Constitution of India.

8. Furthermore, in our view, the order has been passed by the detaining authority without due application of mind, as the bail application filed by the detenu, even according to the detaining authority, as indicated above, was dismissed as far back as on 05.05.2017. The further bail application filed by the detenu is apparently still pending. The fact that the bail has been granted to another person cannot be a reason to detain the detenu.

9. For all these reasons, we are inclined to allow this Habeas Corpus Petition.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention dated 12.05.2017 passed in C3/D.O/26/2017 by the second respondent is set aside. The detenu, namely, Panjali, Wife of Sekar, female aged about 55 years, is directed to be released forthwith unless her 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

sra

To

1. The Secretary to Government,
Prohibition and Excise Dept. (Home),
Fort St. George, Chennai 600 009.
2. The District Collector and
The District Magistrate,
Cuddalore District, Cuddalore.
3. The Superintendent,
Special Prison for Women,
Vellore.
(In duplicate for communication to Detenu)
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

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

+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.75809

H.C.P.No.1323 of 2017

SS (CO)
CA(26/10/2017)



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