

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM:

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

H.C.P.No.1350 of 2017

Guna @ Gunarasa
now lodged at Central Prison,
Puzhal, Chennai - 66

... Petitioner

-vs-

1.State of Tamil Nadu, resp. by its
Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police, Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai - 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to Order of Detention passed by the 2nd respondent dated 13.07.2017 in No.415/BCDFGISSSV/2017, quash the same and direct the respondents to produce the body of the detenu Guna @ Gunarasa (Male/aged 31), Son of Selvarasa (now lodged at Central Prison, Puzhal) before this Court and set him at liberty.

For Petitioner: Mr.V. Elangovan

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.]

1. The petitioner Guna @ Gunarasa, Male, aged about 31 years. He has been detained by the second respondent by his order in No.415/BCDFGISSSV/2017 dated 13.07.2017, holding him to be a "Goonda", as contemplated under Section 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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel for the petitioner would submit that in the grounds of detention order it is stated that the detenu's bail petition in Cr.Nos.19/2017 and 173/2017 are pending and he will indulge in such further activities in future and the detaining authority without waiting for the result of the bail petitions passed the detention order which will vitiate subjective satisfaction. The learned counsel would also submit that the special report to detain the petitioner under Goondas was sent to the 2nd respondent only on 13.07.2017 which contains 314 pages. Hence it is not possible for the 2nd respondent to go through the report as well as all the documents on the time itself and pass an order of detention. The learned counsel would also submit that the order of approval of detention order was not all served to the detenu, which creates doubt whether the detention is approved or not. The above all clearly shows that the detention order was passed without application of mind on the part of the detaining authority. Hence, the same may be quashed.

5. 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.

6. 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. The detaining authority despite the fact that the bail application filed by the detenu were pending adjudication. The bail granted in Cr.No.72 of 2010 said to be a similar case was taken into consideration and inferred that he is likely to come on bail. Admittedly, the detenu was arrested formerly in the month of June 2017 in the ground case, whereas he was in the custody from 5.4.2017 in one of the adverse case. When the bail application is pending for adjudication, the detaining authority arrived at a subjective satisfaction that there is real possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that when no bail application is pending then it is only a logical conclusion

that there is no likelihood of the person in custody would be released on bail. Further, the facts involved in the case relied on by the detaining authority as a similar case are totally different. This also substantiate our conclusion that there is total non application of mind on the part of detaining authority.

7. It is clear from the records that the representation was sent by the mother of the detenu, Mr. V.M.R. Rajentran, the learned Additional Public Prosecutor fairly submitted that the representation is pending and not considered. Further, despite the notice was served to the respondents, no counter affidavit has not filed so far. In view of the above facts would clearly establish that the detention order was passed without application of mind by the detaining authority. In such view of the matter, the impugned detention order is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.415/BCDFGISSSV/2017, dated 13.07.2017, passed by the second respondent is set aside. The detenu, i.e., Tr. Guna @ Gunarasa, aged about 31 years S/o Selvarasa, 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(CS V)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

ggs

To

1. The Principal Secretary to the Government
Home and Prohibition and Excise Department
Chennai-09.
2. The Joint Secretary,
Public, Law and Order Department,
Fort St.George,
Chennai-09

3. The Commissioner of Police,
Greater Chennai, Chennai.
4. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
5. The Public Prosecutor
High Court, Madras.

H.C.P.No.1350 of 2017

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