

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.1394 of 2017

Padmamala

... Petitioner

Vs.

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

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

.... 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 in connection with the order of detention passed by the second respondent dated 20.07.2017 in BCDFGISSSV No.431/2017 against the detenu Ashok Kumar, Male aged 60 years, S/o.Kuppusamy, who is confined at Central Prison, Puzhal, Chennai 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.M.V.Raghunathan,
Senior Counsel
for Mr.Sathyanarayanan

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)

The challenge in this petition is laid vis-a-vis the order of detention dated 20.07.2017 passed by the second respondent vide proceedings BCDFGISSSV No.431/2017, against the detenu, Ashok Kumar, male, aged 60 years, S/o.Kuppusamy, in exercise of 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 (j) of the Tamil Nadu Act 14 of 1982, branding the detenu as a "Video Pirate".

2.The petitioner, who is the wife 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.Learned counsel for the petitioner says that the order of detention has been passed mechanically without application of mind and thus, rendered the entire exercise illegal.

4.As per the detention order, the petitioner was found to be in possession of pirated DVDs and CDs by the Special Sub Inspector of Police along with his team, who were on their routine rounds on 17.07.2017. Consequently, a case was registered against him, i.e., Crime No.214 of 2017.

5.A perusal of the order of detention would show that the detenu had moved an application for bail on 17.07.2017, which is pending. Furthermore, the detention order also adverts to the fact that in a similar case registered under Section 51 r/w 63 (a) of the Copy Right Act, 1957, in Crime No.194/2017, bail was granted on 27.06.2017, which was an order, as is obvious, passed one month prior to the detenu's detention, which occurred on 20.07.2017. According to us, there is total non-application of mind by the detaining authority and therefore, the detention order cannot be sustained.

6.Furthermore, notice in this petition was ordered on 01.08.2017 and despite opportunity being granted, no counter-affidavit has been placed on record to date.

7.For all these reasons, we are inclined to allow this petition setting aside the order of detention passed against the detenu.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.431/2017 dated 20.07.2017 passed by the second respondent is set aside. The detenu, namely, Ashok Kumar, Son of Kuppusamy, male aged about 60 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(CS III)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Government,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai-9.
2. The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
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.Sathya Narayanan, Advocate, S.R.No.76187

H.C.P.No.1394 of 2017

GMI (CO)
CA(27/10/2017)