

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1414 of 2017

Rajkumar Dass

... Petitioner

-VS-

1.The State of Tamil Nadu

Represented by its Secretary to Government
Prohibition and Excise Department (Home)
Fort St.George, Chennai – 600 009

2.The Commissioner of Police
Greater Chennai

... 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 passed by the 2nd respondent pertaining to the order
made in Memo No.256/BCDFGISSSV/2017 dated 10.05.2017 in detain

the detenu under 2 (f) of the Tamil Nadu Act 14 of 1982, as a Immoral Traffic Offender and quash the same and direct the respondent to produce the detenu Rajkumar Dass, Son of Govinda Dass, aged about 23 years, who is detained at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr. Ilayaraja Kandasamy for
Mr. Nirmal Krishnan

For Respondents: Mr. V.M.R. Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by N.SATHISH KUMAR, J.]

The detenu, namely, Rajkumar Dass, S/o. Govinda Dass, Male, aged about 23 years is the petitioner herein. The detenu has been detained by the 2nd respondent by his order in No.256/BCDFGISSSV/2017 dated 10.05.2017, holding him to be a "Goonda", as contemplated under 2(g) 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. Learned counsel appearing for the petitioner has contended that as per the Detention Order, the detenu has been arrested on 06.04.2017, whereas after a lapse of 33 days, the Detention Order in question has been passed on 10.05.2017 and no proper explanation has been given on the side of the respondents with regard to such huge delay. He has further contended that the Detaining Authority, by relying on a similar case in Crime No.133 OF 2014, in which bail was granted to the detenu, has come to the conclusion that there is real possibility of the detenu coming out on bail, which itself shows non application of mind on the part of the Detaining Authority.

4. The learned Additional Public Prosecutor 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. On a perusal of the impugned order of detention, we find that the detenu has been arrested on 06.04.2017, whereas the Detention Order in question has been passed on 10.05.2017. As rightly pointed out on the side of the petitioner/detenu, there is a delay of 33 days in passing the Detention Order and no explanation has been given on the side of the respondents. That apart, though the detaining authority has made reliance on similar case in which detenu was granted bail, the facts involved in that case are different. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail. Therefore, the order of detention was passed mechanically without application of mind. Therefore, on these grounds, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.256/BCDFGISSSV/2017, dated 10.05.2017, passed by the 2nd respondent is set aside. The detenu, namely,

Rajkumar Dass, son of Govinda Dass, aged about 23 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.

[R.S.A.,J.] [N.S.K.,J.]

13.10.2017

Index : Yes / No

Internet : Yes / No

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Note to office:

Issue copy by today itself
order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To:

1. The Secretary
Prohibition and Excise Department (Home)
Fort. St.George, Chennai – 600 009
2. The Commissioner of Police
The Commissioner Office, Vepery, Chennai.

RAJIV SHAKDHER, J.

and

N.SATHISH KUMAR, J.

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3. The Superintendent,
Central Prison, Puzhal, Chennai

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



H.C.P.No. 1414 of 2017

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