

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.1446 of 2017

Mohan @ Kuttiya Mohan

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai, 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 pertaining to order of detention passed by the second respondent dated 23.06.2017 in No.376/BCDFGISSSV/2017 against the detenu Mohan @ Kuttiya Mohan, Male aged 31 years, S/o.Kalaimani, 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.T.Gobinath
for Mr.R.Rajiv Gandhi

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

WEB COPY

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O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J)

The petitioner is the detenu, who has been detained by the second respondent by his order in No.376/BCDFGISSSV/2017 dated 23.06.2017, holding him to be a "Goonda", as contemplated under

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. The learned counsel for the petitioner made only one submission that the detention order has been passed by the detaining authority without application of mind inasmuch as when earlier bail application was dismissed and the second bail application is pending consideration, taking into consideration that the relatives of the detenu are taking efforts to move bail application in the third adverse case, the detaining authority has passed the detention order against the detenu, which is nothing but a non-application of mind and on this ground alone, the order of detention is vitiated.

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 in the ground case, after the dismissal of the first bail application in CrI.M.P.No.1667/2017, the second application for bail is still pending. Besides that, in respect of the third adverse case in Crime No.683/2017, admittedly the detenu has not moved any bail application. However, the detaining authority has inferred that the relatives of the detenu are taking efforts to move bail application in the third adverse case, thereby he is likely to come out on bail. Such a conclusion is nothing but a clear non-application of mind. Besides, the detaining authority has taken into consideration that in similar case, bail has been granted to some other accused, which cannot be a ground to detain the detenu.

6. That apart, the detenu was arrested on 03.05.2017, whereas the detention order was passed on 23.06.2017, with inordinate delay, which remains unexplained.

7. Furthermore, despite notice being ordered in this petition on 07.08.2017, no counter-affidavit has been placed before this Court to date, in spite of one more opportunity being given on 18.09.2017.

8.For all these reasons, we are inclined to allow this habeas corpus petition.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.376/BCDFGISSSV/2017 dated 23.06.2017 passed by the second respondent is set aside. The detenu, namely, Mohan @ Kuttiya Mohan, Son of Kalaimani, male aged about 31 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 VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Central Prison, Puzhal, Chennai..

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

5.The Joint Secretary to Government,
Public (L & O) Dept,
Secretariat,
Ch-9..

H.C.P.No.1446 of 2017

ss(27/10/2017)