

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.1448 of 2017

Hari @ Harish Kumar

... Petitioner

-vs-

1.The State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department (Home)
Fort St.George, Chennai – 600 009

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai -600 007

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order passed in Memo No.351/BCDFGISSSV/2017 dated 17.06.2017 on the file of the 2nde respondent herein and set aside the same and direct the respondents to produce the body of Thiru. Hari @ Harishkumar son of Vikram, the detenu herein now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

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, Hari @ Harishkumar, S/o. Vikram, Male, aged about 26 years is the petitioner herein. The detenu has been detained by the 2nd respondent by his order in BCDFGISSSV No.351 of 2017 dated 17.06.2017, 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. Learned counsel appearing for the petitioner has contended that as per the Detention Order, the detenu has been arrested on 08.04.2017, whereas after a lapse of more than two months, the Detention Order in question has been passed on 17.06.2017 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.809 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. Though no counter affidavit has been filed by the respondents, 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 08.04.2017, whereas the Detention Order in question has been passed on 17.06.2017. As rightly pointed out on the side of the petitioner/detenu, there is a delay of 69 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 BCDFGISSSV NO.351 OF 2017, dated 17.06.2017, passed by

the 2nd respondent is set aside. The detenu, namely, Hari@ Harishkumar, son of Viram, aged about 26 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.
3. The Superintendent,
Central Prison, Puzhal, Chennai
4. The Additional Public Prosecutor,
Madras High Court,
Madras

RAJIV SHAKDHER, J.

and

N.SATHISH KUMAR, J.

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