

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.1519 of 2017

Thiru. Rajan @ Thundubeedi Rajan ... Petitioner

-vs-

1.The Secretary,
Home, Prohibition and Excise Department,
Govt. of Tamilnadu, St.George Fort,
Secretariat, Chennai.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai 600007. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the Detenu Mr.Rajan @ Thundubeedi Rajan son of Munusamy aged about 39 years now confined at Central Prison,Puzhal, Chennai-66 in pursuance of the order passed by the second Respondent on 20.05.2017 vide Order BCDFGISSSV No.281/2017 before this Court and call for the records from the above named respondents to set aside the same and also set the detenu at liberty.

For Petitioner : Mr.Senthil for Mr.N.Balasubramanian
For Respondents: Mr.V.M.R. Rajentren
Additional Public Prosecutor

O R D E R

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

The petitioner namely, Rajan @ Thundubeedi Rajan son of Munusamy, Male, aged about 39 years is the detenu. The petitioner/detenu has been detained by the second respondent by his order in BCDFGISSSV No.281/2017 dated 20.05.2017, 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 appearing for the petitioner would submit that the petitioner have 3 adverse cases and in the ground case he has not moved bail application. But the detaining authority had made a wrong observation that if the detenu comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order, even the detaining authority made a presumption statements not on evidence. when there is no bail application pending in the ground case, the detaining authority passed the detention order stating reason that the detenu is likely to come out on bail. The learned counsel would further submit that the detenu is already in judicial custody as an under trial prisoner and imminent possibility of his release on bail is not enough for the detaining authority to pass the impugned order. So, the above are squarely show that there is non-application of mind on the part of the detaining authority in passing the order of detention.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit 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. Admittedly, in the ground case no bail application was pending. Without considering this the detaining authority has passed the detention order stating that if the detenu comes out on bail he will indulge in further activities, which is nothing but only non application of mind in passing the detention order. Further no cogent materials are available before the detaining authority to apprehend that the detenu is likely to get bail in the ground case and there is imminent possibility of the detenu to come out on bail in the said case. Thus, the detention order is vitiated on the above sole ground and the same is liable to be quashed. Further, the detenu was arrested on 1.5.2017 and the Detention Order was passed on 20.05.2017. In this case notice was issued on 18.8.2017. Since then, no counter affidavit was filed. Therefore, there is no explanation, on record, for the delay in

passing the detention order. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.281/2017 dated 20.05.2017, passed by the second respondent is set aside. The detenu, namely, Rajan @ thundubeedi Rajan, son of Munusamy male, aged about 39 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/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ggs

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
 - 2.The Commissioner of Police, Egmore, Chennai 600008.
 - 3.The Superintendent, Central Prison, Puzhal.
 4. The Joint Secretary to Government,
Public (Law & Order)
fort St.George, Chennai.
 - 5.The Public Prosecutor, High Court, Madras.
- +lcc to Mr.N.Balasubramanian, Advocate in sr.no.73977

NR 13/10/2017

H.C.P.No.685 of 2017

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