

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.1531 of 2017

S. Rathna

... 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 District Collector
Cuddalore District.
Cuddalore.
 3. The Inspector of Police,
Virudhachalam Circle,
Virudhachalam
Cuddalore
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records, of the 2nd respondent in Na.Ka.No.C3/D.O./11/2017 dated 11.04.2017 and quash the same and hereby direct the respondents to produce the petitioner's husband namely S.Sivakumar S/o Krishnan aged about 49 years now detained at Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.G.Anabayachozhan

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

O R D E R

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

The petitioner is the wife of the detenu, namely, Sivakumar Son of Krishnan male aged 49 years. The detenu has been detained by the 2nd respondent by his order in No.C3/D.O./11/2017 dated 11.4.2017, holding him to be a "Drug Offender", 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 appearing for the petitioner would submit that the detenu has not filed any bail application. However, the detaining authority has come to the conclusion that there is real possibility of the detenu coming out on bail. Learned counsel further submits that the detaining authority has passed the detention order without relevant records. He would further submit that in the Booklet page No.19,28,29 are illegible and hence it is affected the detenu for making effective representation. He would further content that in the detention order different date was mentioned i.e. In Tamil 11.4.2016, in English 11.4.2017 which shows that the detaining authority due to non application of mind passed the detention order. On the above grounds the detention order is vitiated.

4. 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. He further states that in Cr.No.848 of 2017 the bail was granted to the petitioner. Hence, the detaining authority infer that there is real possibility of coming out of bail.

5. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending in the adverse case and the ground case. Though the detaining authority has made reliance on similar cases in which accused were granted bail, the facts involved in those cases are different. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Further the detenu was arrested on 9.3.2017 and the detention order was passed on 11.4.2017 In this case notice was issued on 21.8.2017. Since then, no counter affidavit was filed. Therefore, there is no explanation, on record, for the delay in passing the detention order. Therefore, on the above 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.C3/D.O./11/2017 dt.11.4.2017, passed by the 2nd respondent is set aside. The detenu, namely, Sivakumar S/o Krishnan Male aged 49 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

ggs

To:

- 1.The Secretary to Government,
State of Tamil Nadu
Prohibition and Excise Department (Home)
Fort St.George, Chennai - 600 009.
- 2.The District Collector
Cuddalore District.
Cuddalore.
- 3.The Inspector of Police,
Virudhachalam Circle,
Virudhachalam
Cuddalore
- 4.The Superintendent,
Central Prison, Cuddalore. (By Fax)
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 6.The Additional Public Prosecutor,
Madras High Court,
Madras

+1cc to Mr.G.Anabayachozhan, Advocate, S.R.No.74288

H.C.P.No.1531 of 2017

RSK(CO)
CA(23/10/2017)