

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1546 of 2017

Tmt. Prema

... Petitioner

-vs-

1.The State of Tamil Nadu
rep. by its Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The District Collector and
District Magistrate of
Krishnagiri District,
Krishnagiri.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 08.08.2017 in his office Ref.S.C.No.51/2017 against the petitioner's husband by name Thiru. Ganapathy, S/o Kesavappa, aged about 41 years, now confined at Central Prison, Salem, Salem District and set aside the same and direct the respondents to produce the above said detinue before this Court and set him at liberty.

For Petitioner : Mr.E. Kannadasan

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

WEB COPY

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. The petition is filed by the wife of the detinue / Thiru.Ganapathy S/o Thiru. Kesavappa male aged 41 years, seeking to challenge the Detention Order dated 08.08.2017. A perusal of the detention order would show that this is the first instance of alleged infraction of law by the detinue. The detinue appears to have been accused of illicit quarrying of river sand.

the detainee was caught red-handed by the Inspector of Police, Shoolagiri Police Station, at Thorippalli branch road, in Kamanthotti - Pukkasagaram branch road, while he attempted to smuggle 3 units of river sand into Karnataka State for sale, via in his own vehicle. Accordingly on 27.07.2017, the detainee was arrested and taken into custody by the concerned authority in exercise of powers under Tamil Nadu Act 14 of 1982.

3. The learned counsel for the petitioner says that the impugned order has been passed without due application of mind. It is stated that the aforementioned instance, which led to registration of Cr.No.295 of 2017 u/s 379 I.P.C.r/w 21(i)(iv) of Mined and Minerals (Development and Regulation) Act, 1957 is got up case.

3.1. It is further submitted that the detainee had preferred a bail application (Crl.M.P.No.1187 of 2017) which was dismissed on 04.8.2017.

3.2. Learned counsel submits that despite the dismissal of the bail application, the detaining authority has passed the impugned order by taking into account an irrelevant fact, which is enlargement on bail of another accused in Crl.M.P.No.429 of 2015, ostensibly, in a case of similar nature.

4. We have heard the learned counsels for the parties and perused the records. According to us, there is a total non-application of mind on the part of the detaining authority. A perusal of the impugned order would show that apprehension expressed of the likelihood of the detainee being released is based on the result in a similar case. It is to be noted that bail in that case was granted in and about February 2015, whereas, the detainee is said to have committed the alleged offence in July 2017.

5. In our view, the subjective conclusion reached by the detaining authority that, if the detainee is released he would commit a similar offence, is not supported by cogent material.

5.1. Furthermore, there is also unexplained delay in passing the detention order. As indicated, the detention order was passed on 08.08.2017, whereas, the detainee was arrested on 27.07.2017. The delay involved in passing the impugned order has not been explained.

5.2. Accordingly, we are inclined to quash the detention order.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.51/2017, dated 08.08.2017, passed by the 2nd respondent is set aside. The detainee, namely, Thiru. Ganapathy, male, aged about 41 years, S/o Thiru. Kesavappa 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 III)

//True Copy//

Sub Assistant Registrar

ggs

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Joint Secretary,
Public, Law and Order Department
Fort st.George, Chennai 600009.
- 3.The District Collector and District Magistrate of
Krishnagiri District, Krishnagiri.
- 4.The Superintendent,
Central Prison, Salem.
- 5.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.1546 of 2017

GN(01/11/2017)

सत्यमेव जयते

WEB COPY