

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1630 of 2017

Mr.K.Dinesh

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to the Government,
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Vepery
Chennai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records of the second respondent in No.481/BCDFGISSSV/2017 dated 09.08.2017 and quash the same and thereby directing the respondents to produce the petitioner's brother K.Ajay Kumar Tiwari (detenu), aged about 42 years, now detained in Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel

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

O R D E R

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

The petitioner is the brother of the detenu, namely, Ajay Kumar Tiwari, S/o.Kailash Tiwari, male, aged about 42 years. The detenu has been detained by the second respondent by his order in No.481/BCDFGISSSV/2017 dated 09.08.2017, holding him to be a "Drug Offender", as contemplated under Section 2(e) of the 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 has been remanded to Judicial Custody in connection with the ground case. The detenu has moved a bail application and the same is pending. However, the detaining authority by relying on the similar case registered in Crime No.791/2014 on the file of T11, Thirunindravur Police Station for the offence under Sections 8(c) read with 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985, in which the accused has been released on bail by the Special Court for NDPS Cases, Chennai, has come to the conclusion that there is real possibility of the detenu coming out on bail. 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 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. On a perusal of the impugned order, we find that despite the application for bail is pending, the Detaining Authority has come to the conclusion that he may be released on bail. Such conclusion is without any basis. That apart, the similar case relied on by the Detaining Authority relates to the year 2014. That apart, though the contraband was allegedly seized on 21.07.2017, the same has been sent to the Court with inordinate delay on 27.07.2017. The delay is also remain unexplained and the same has also not taken into consideration by the Detaining Authority, while the detention order has been passed. That apart, despite the notice dated 01.09.2017, the prosecution has not filed any counter affidavit. Therefore, we are of the view that 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 No.481/BCDFGISSSV/2017 dated 09.08.2017, passed by the second respondent is set aside. The detenu, namely, Ajay Kumar Tiwari, S/o.Kailash Tiwari, male, aged about 42 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(CO)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home)
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Vepery
Chennai.
- 3.The Superintendent,
Central Prison, (In duplicate for communication to Detenue)
Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court,
Chennai.
- 5.The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai-9.

+1cc to Mr.S.Senthivel, Advocate, S.R.No.77794

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GN(02/11/2017)