IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

Coram

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

H.C.P.No.1671 of 2017

Amaravathi ... Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent 27.08.2017 in D.O.No.31/2017-C2 against the petitioner son Karthi, male, aged 36 years S/o.Murugesan, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

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

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

1.This is a petition, which seeks to assail the detention order dated 27.08.2017.

2. A perusal of the detention order would show that there are two (2) adverse cases noted against the detenu. These being : Crime No.88 of 2017; and Crime No.281 of 2017. In respect of both cases, the detenu has been booked under various provisions of the TNP Act, 1937.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. Insofar as, the subject case is concerned, the same is registered as Crime No.389 of 2017. In this case as well, the detenu has been booked under the provisions of the TNP Act, 1937.

3.1. Furthermore, the record shows that the detenu was arrested on 12.08.2017.

4. The Detaining Authority, it appears, has come to the conclusion that the detenu was likely to be enlarged on bail, as the detenu was granted bail in Crime No.281 of 2017 and that in a similar case bail was granted, albeit, in 2015.

5. We have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. We have also perused the records. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detentu was arrested on 12.08.2017, the impugned detention order was passed on 27.08.2017. Notice in this petition was issued on 07.09.2017, despite which, no counter affidavit has been filed. Resultantly, the delay in passing the impugned detention order has not been explained.

(ii) Second, according to us, there has been a non-application of mind by the Detaining Authority, as the Detaining Authority failed to take into account the fact that bail was granted to the detenu only in one adverse case i.e., Crime No.281 of 2017. Insofar as the other adverse case is concerned, i.e., Crime No.88 of 2017, bail had not been granted, on the date when the impugned order was passed. Moreover, in Crime No.389 of 2017, the detenu had not, as it appears from the record, filed a bail application. The Detaining Authority ignoring these facts has been swayed only by the fact that bail was granted to the detenu in Crime No.281 of 2017 and in a similar case pertaining to 2015.

(iii) Third, the samples were collected by the Police on 12.08.2017, whereas they were dispatched to the Court on 17.08.2017. The delay in this behalf, also remains unexplained.

6. Thus having regard to the aforesaid, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.31/2017-C2, dated 27.08.2017, passed by the second respondent is set aside. The detenu, namely, Karthi, S/o.Murugesan, male, aged about 36 years, is directed to be released forthwith unless his detention is

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

required in connection with another 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 IV)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

4.The Superintendent,
Central Prison,
Vellore.
[In duplicate for communication to the detenu]

5.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.D.Balaji, Advocate in sr.no.89678

H.C.P.No.1671 of 2017

NR 15/12/2017

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/