

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2017

Coram

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

H.C.P.No.1770 of 2017

Kumar @ Kumaran

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by
The Secretary to Government,
Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
Chennai - 9.

2.The Commissioner of Police
Greater Chennai
Office of Commissioner of Police
Vepery, Chennai - 7.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, holding the impugned order of detention passed Memo No.536/BCDFGISSSV/2017 dated 02.09.2017 under the Tamil Nadu Act 14 of 1982 as highly arbitrary, illegal and unconstitutional and direct the respondents to produce the body of the detenu namely Kumar @ Kumaran, Son of Loganathan, Indian, aged about 30 years residing at No.4/44, Bajanaikoil Street, Sirunivam Village, Sholavaram, Thiruvallur District, now detained in the Central Prison, Puzhal-II, Chennai -66 before this Court and set him at liberty and to call for records pertaining to the order of detention passed by the second respondent in BCDFGISSSV/2017 dated 02.09.2017 and set aside the same.

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

O R D E R

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

1. This petition is directed against the detention order dated 02.09.2017.

2. The record shows that there is no adverse case noted qua the detenu.

3. Insofar as the subject case is concerned, it is registered as : Crime No.1047 of 2017. In this case, the detenu has been booked, along with the other accused, under Sections 147, 148, 341, 302 and 506(ii) of the IPC.

3.1.The record further shows that the detenu surrendered before the learned Judicial Magistrate No.II, Thiruvallur, on 4.07.2017.

3.2. Furthermore, a perusal of paragraph No.3 of the impugned order would show that the detenu had moved an application for bail in Crime No.1047 of 2017 before the Principal Sessions Judge, Chennai, which was pending on the date, when the impugned order was passed. The only reason, which the Detaining Authority furnishes for entertaining an apprehension that the detenu may be released on bail, is the factum of bail having been granted in a similar case pertaining 2013.

3.3.We may also note that though the number of bail application has been given, i.e., Crl.O.P.No.9556 of 2013, the date of the order passed thereto has not been set out in the impugned order.

4. Having perused the records and heard the learned counsel for the petitioner and the learned Additional Public Prosecutor, we are of the view that the impugned order cannot be sustained for the following reasons:

(i) First, the detenu had surrendered as far back as on 04.07.2017, whereas, the detention order was passed nearly two (2) months thereafter, that is, on 02.09.2017. Clearly, there has been delay, the reason for which is not explained by the State.

(ii) Second, even according to the Detaining Authority, on the date when the impugned order was passed, the bail application (Crl.M.P.No.12804 of 2017), filed by the detenu in Crime No.1047 of 2017 was pending, and therefore there was no real likelihood of the detenu being enlarged on bail. The only reason furnished by the Detaining Authority to entertain such an apprehension was that bail, in a similar case, had been granted to another accused. It is to be noted that the said bail petition pertains to 2013, whereas the detenu had committed the offence some time in 2017. As to how this two cases are similar is not articulated in the impugned order.

4.1. We may also observe that notice in this petition was issued on 21.09.2017, despite which, to date, no counter affidavit has been filed by the State. Resultantly, the assertions made in the petition have remain uncontroverted.

5. Thus, for the foregoing reasons, we are inclined to quash the impugned order. It is ordered accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.536/BCDFGISSSV/2017 dated 02.09.2017, passed by the second respondent is set aside. The detenu, namely, Kumar @ Kumaran, S/o.Loganathan, male, aged about 30 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

vsm

To

- 1.The Secretary to Government,
Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
Chennai - 9.
- 2.The Commissioner of Police
Greater Chennai
Office of Commissioner of Police
Vepery, Chennai - 7.
- 3.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 9.
- 4.The Superintendent,
Central Prison,
Puzhal - II, Chennai.
(In duplicate for communication to the detenu)
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1770 of 2017

NR 14/11/2017