

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2017

Coram

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

H.C.P.No.1858 of 2017

Raji

... Petitioner

Vs.

- 1.The Secretary to the Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block, New Delhi - 110 001

Lieutenant Governor,
Rajnivas, Puducherry

(Deleted as per the order of this Court
dated 10.10.2017 in HCP No.1858/2017)

2. The District Magistrate cum Authorised Officer,
I floor, Vazhthavoor Road,
Kavundampalayam,
Puducherry - 605 009

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the order of detention in No.18/DM/RO/D2/PPASAA/2017 on the file of third respondent dated 14.09.2017, quash the same and direct the respondents to produce the detenu Balakrishnan, S/o Raji, who is kept in Central Prison, Kalapet, Puducherry.

For Petitioner : Mr.M.R. Elavarasan

For 1st Respondents : Mr.C. Arockiam
Standing Counsel

For 2nd respondent : Mr.Bharathachakravarthi
Public Prosecutor (Pondy.)

O R D E R

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

The petitioner is the father of the detenu , namely, Balakrishnan, Male, aged 27 years, S/o Raji, The detenu has been detained by the second respondent by his order in Memo No.18/DM/RO/D2/PPASAA/2017 on the file of third respondent dated 14.09.2017 holding him to be a "Goonda", 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 Standing Counsel appearing for the first respondent and the learned Public Prosecutor, appearing for the second respondent. We have also perused the record produced by the Detaining Authority.

3. As noted in our previous order dated 17.11.2017, the date of arrest has not been mentioned in the detention order.

4. Mr.Bharathachakravarthi, learned Public Prosecutor (Pondicherry) informs us that the detenu was arrested on 24.07.2017. However, the learned Public Prosecutor (Pondicherry), in his usual fairness, says that the timeline given in Sec.11 of The Puducherry Prevention of Anti-Social Activities Act, 2008 which required that the case of the detenu be placed before the Advisory board within three weeks of passing of the detention order, had not been adhered to. The learned Public Prosecutor further says that this could not be done as the Chairperson of the Advisory Board had put in his resignation.

5. According to us, the delay on account of this eventuality, that is, resignation of the Chairperson, is not excepted under the provisions of Section 11 of the aforementioned Act. Therefore, the detention order, being flawed, deserves to be quashed on this ground alone.

6. We may, however, note that a perusal of paragraph-7 of the impugned order shows that even though the detaining authority had noted that the detenu had applied for bail, the status of the bail application was not indicated in the detention order.

6.1. In addition, we also note that, while, the detention order was passed on 14.09.2017, the detenu was arrested on 24.07.2017. There is an unexplained delay in passing the impugned order. The State has not filed counter affidavit in the matter, despite opportunity given in that behalf. Thus, we are of the view that the assertion made in the captioned

petition remains uncontroverted.

7. Thus, for the foregoing reasons, the detention order is liable to be set aside. It is ordered accordingly.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No. 18/DM/RO/D2/PPASAA/2017 dated 14.09.2017 passed by the second respondent is set aside. The detenu, namely, Balakrishnan, Male, aged 27 years, S/o Raji 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

To

- 1.The Secretary to the Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block, New Delhi - 110 001
2. The District Magistrate cum Authorised Officer,
I floor, Vazhthavoor Road,
Kavundampalayam,
Puducherry - 605 009
3. The Superintendent of Central Prison,
Kalapet, Puducherry.
4. The Public Prosecutor (Puducherry),
Puducherry.

+ 1 cc to Mr.C. Arockiam Advocate,SR.82065

+ 1 cc to The Govt.Pleader(Puducherry) SR.82220

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NR 20/11/2017