

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2017

Coram

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

H.C.P.No.1976 of 2017

P.Mohan

... Petitioner

Vs.

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
 2. The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the second respondent pertaining to the order made in B.C.D.F.G.I.S.S.S.V.No.92/2017 dated 10.10.2017 against the petitioner brother Mr.Venkacherry Arul @ Arul, son of Mr.Ponnuvel who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detainee before this Court and set him at liberty.

For Petitioner : Mr.Sasikumar

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

O R D E R

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

1. This is a petition directed against the Detention Order dated 10.10.2017. A perusal of the Detention Order would show that three adverse cases have been noticed qua the detainee/Mr.Venkacherry Arul @ Arul. These being Crime No.3680 of 2015; Crime No.381 of 2016; and Crime No.61 of 2016. In all these cases, the detainee/Mr.Venkacherry Arul @ Arul has been booked under sections 4(1)(aaa) and 4(1-A) of the Tamilnadu

Prohibition Act, 1937, read with sections 6 and 11 of the Rectified Spirit Rules 2000.

2. Insofar as the subject case is concerned, the same has been registered as Crime No.361 of 2017. In respect of this case, the detainee/Mr.Venkacherry Arul @ Arul has been booked under sections 4(1)(aaa) and 4(1-A) of the Tamilnadu Prohibition Act read with sections 7 and 11 of the Rectified Spirit Rules 2000.

2.1. The record shows that the detainee/Mr.Venkacherry Arul @ Arul was arrested on 17.09.2017.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor on behalf of the respondents.

4. According to us, the impugned order cannot be sustained for the following reasons :

4.1. Firstly, even though the detainee/Mr.Venkacherry Arul @ Arul was arrested on 17.09.2017, the Detention Order has been passed on 10.10.2017. The delay in passing the impugned Order is unexplained. Notice in this petition was issued on 26.10.2017. The State has chosen not to file a counter affidavit in the matter despite opportunity being given in that behalf.

4.2. Secondly, a perusal of the impugned Order would show that, even though the detainee/Mr.Venkacherry Arul @ Arul had moved for bail, on the date of passing of the impugned order, the same was pending. Based on the fact that in a previous case, the detainee/Mr.Venkacherry Arul @ Arul had been released on bail, the detaining authority arrived at a conclusion that there was a real possibility of the detainee/Mr.Venkacherry Arul @ Arul being enlarged on bail.

4.3. According to us, the fact that the bail petition of the detainee/Mr.Venkacherry Arul @ Arul was pending, is a matter which ought to have weighed with the detaining authority before it arrived at a conclusion that the detainee/Mr.Venkacherry Arul @ Arul would be released on bail.

6. As indicated above, what has concerned us most in the matter is the delay, in passing the impugned order. Therefore, for the aforementioned reasons, we are inclined to quash the detention order.

7. In the result, the Habeas Corpus Petition is allowed. The Order of detention in No. B.C.D.F.G.I.S.S.S.V.No.92/2017 dated 10.10.2017, passed by the second respondent is set aside. The detenu, namely, Mr.Venkacherry Arul, son of Mr.Ponnuvel aged about 43 years, is directed to be released forthwith unless his custody is required in connection with another case.

8. Consequently, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

ggs/vrc

To

- 1.The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
 - 2.The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
 3. The District Collector and
District Magistrate,
Kancheepuram District, Kancheepuram.
 4. The Superintendent,
Central Prison, Puzhal - II,
Chennai. (in Duplicate for communication to Detenu)
 5. The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.R.SasiKumar, Advocate SR.No.84821

H.C.P.No.1976 of 2017

GN(29/11/2017)