

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.2039 of 2017

Kumar

... Petitioner

Vs.

1.The State Rep. by Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector &
The District Magistrate,
T.V.Malai,
T.V.Malai District.

... 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 D.O.No.42/2017-C2 passed by the second respondent on 17.10.2017 set aside the same and direct the respondents to produce the Elumalai son of Kumar aged 43 years, who is now detained in Central Prison, Vellore before this Court and set him at liberty.

सत्यमेव जयते

For Petitioner : Ms.S.Swamidoss Manokaran
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

WEB COPY

O R D E R

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

1. This is a petition which seeks to challenge the detention order dated 17.10.2017.

2. A perusal of the detention order would show that two (2) adverse cases are noted qua the detenu. These being : Crime No.56 of 2017 and Crime No.391 of 2017. In both cases, the detenu has been booked under the provisions of TNP Act, 1937.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.570 of 2017.

3.1. Furthermore, a perusal of the record would show that the detenu was arrested on 26.09.2017.

4. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. We have also perused the record. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, though the detenu was arrested on 26.09.2017, the impugned detention order was passed only on 17.10.2017. Notice in this petition was issued on 02.11.2017. Despite opportunity being given, the State has not filed a counter affidavit in the matter. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, a perusal of paragraph No.5 of the detention order would show that in Crime No.570 of 2017, bail application was filed, which was pending, on the date when the impugned order was passed. Furthermore, even in Crime No.56 of 2017, the bail application moved by the detenu was pending. Insofar as the other adverse case is concerned i.e., Crime No.391 of 2017, the detenu, as noticed by the Detaining Authority in paragraph No.5 of its order, had been convicted, pursuant to which he had paid the fine amount to the Court concerned. The Detaining Authority, however, taking into account these factors, according to us, erroneously, came to the conclusion that there was a likelihood of the detenu being released on bail. In support this conclusion, the Detaining Authority relied upon a similar case, which, evidently, pertained to 2015. According to us, the approach of the Detaining Authority is flawed.

5. Thus having regard to the aforesaid, we are inclined to quash the impugned order. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.42/2017-C2 dated 17.10.2017, passed by the second respondent is set aside. The detenu, namely, Elumalai, S/o.Kumar, male, aged about 43 years, is directed to be released forthwith unless his detention is 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/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector &
The District Magistrate,
Thiruvannamalai District
Thiruvannamalai District
- 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.

सत्यमेव जयते

H.C.P.No.2039 of 2017

aa15/12/2017

WEB COPY