

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2017

Coram

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

H.C.P.No.2066 of 2017
and CrI.M.P.No.14263 of 2017

G. Venkatesan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. By its Secretary,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.

2.The Commissioner of Police,
Office of the Commissioner Office,
Vepery, Chennai - 600 007

...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 detention order Memo No.581/BCDFGISSSV/2017 dated 21.09.2017 on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son V. Gowri Shankar, aged about 24 years, the detenu now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.K. Kannan

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

सत्यमेव जयते

O R D E R

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

1. Issue notice. Mr.V.M.R.Rajentran, learned Additional Public Prosecutor (APP) accepts notice. Learned APP says he does not wish to file a reply to the petition.

2. This is an application seeking early hearing in HCP No.2066 of 2017.

3. The reason given to seek early hearing in the petition is, broadly, that since the grandfather of the detenu expired on 7.11.2017 and as he is required to participate in the

ceremonies related to his grandfather's demise, which are to be held on 16.11.2017, the matter be heard today.

4. Furthermore, it is stated that there is only one case, which is the subject case, that is, registered against the detenu and it is in connection with case that he has been unlawfully detained, since, 13.09.2017, inter-alia, on the charge of Video Piracy.

5. Having examined the reasons, we are inclined to allow the prayer sought for in the petition.

6. Consequently, with the consent of the learned APP, the main petition is taken up for hearing. The learned APP says he will argue the case based on the record.

7. The petitioner is the father of the detenu, namely, Gowri Shankar, male, aged about 24 years. The detenu has been detained by the second respondent via his order in Memo No.581/BCDFGISSSV/2017, dated 21.09.2017, holding her 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.

8. We have heard the learned counsel for the petitioner and the learned APP appearing for the respondents. We have also perused the records produced by the Detaining Authority.

9. A perusal of the detention order would show that there are no adverse cases noted qua the detenu. Insofar as the subject case is concerned, which is registered as Cr.No.301/2017, the detenu has been booked for offences alleged to have been committed under Secs.51 r/w 63(a) of the Copyrights Act 1957 and 292(2)(a) of the IPC and 67(A), 67(B)(c) of the Information Technology (Amendment) Act 2008.

10. The record further shows that the detenu was taken into custody on 13.09.2017. A perusal of paragraph-3 of the detention order would show that even according to the detaining authority, the detenu had moved a bail application, which was pending on the date when the impugned order was passed.

10.1. The detaining authority, however, has come to the conclusion that there was a likelihood of the detenu being enlarged on bail only on the ground that in a similar case, i.e., Cr.No.58 of 2017, bail was granted.

10.1. To be noted that the date of the order has not been mentioned in the impugned order.

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

(I) Firstly, even though the detenu was detained on 13.09.2017, the detention order was passed on 21.09.2017. There is a delay of nearly eight (8) days in passing the detention order.

(II) Secondly, even according to the detaining authority, on the date, when the impugned order was passed, bail application, filed by the detenu, was pending.

(III) Cr.No.301 of 2017 is the only case registered against the detenu. In our view, the detenu does not appear to be a

repeat offender.

11. Therefore, for all the foregoing reasons, we are of the view, as indicated above, that the impugned order needs to be quashed. It is ordered accordingly.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No. No.581/BCDFGISSSV/2017 dated 21.09.2017, passed by the second respondent is set aside. The detenu, V. Gowri Shankar, S/o G. Venkatesan aged about 24 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.

13. Consequently, Crl.M.P No.14263 of 2017 is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

sr/pam

To

1. The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
Office of the Commissioner Office,
Vepery, Chennai - 600 007
3. The Superintendent of Central Prisons,
Puzhal, Chennai
4. The Public Prosecutor,
Madras High Court,
Chennai.
5. The Principal Secretary to Govt.,
Public (law and order),
FSG, Chennai 9

HCP No.2066 of 2017 and
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T.R (15/11/2017)