

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN
and
THE HONOURABLE MR.JUSTICE S. BASKARAN

H.C.P.No.210 of 2017

S. Ilangovan

... Petitioner

Vs.

1. State of Tamil Nadu rep. by its
Principal Secretary,
Department of Home, Prohibition
and Excise, Secretariat,
Chennai - 600 009.

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

3. The State rep. by
The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records, in Memo No. 06/BCDFGISSU/2017 dated 09.01.2017 on the file of the 2nd respondent and quash the detention order as illegal and direct the respondents to produce the detenu Dharmadurai @ Sathish, S/o. Perumal, aged about 25 years, the detenu now confined at Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner :: Mr.G. Pavendhan

For Respondents :: Mr.V.M.R.Rajentren,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.V. MURALIDARAN, J.]

The petitioner, who is the uncle of the detenu Dharmadurai @ Sathish, has come up with this habeas corpus

petition, challenging the detention order passed by the 2nd respondent, vide proceedings in Memo No. 06/BCDFGISSSU/2017 dated 09.01.2017.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. According to the learned counsel for the petitioner, though bail was granted to the detenu in the ground case in Crime No. 2273/2016 on the file of S-8 Adambakkam Police Station, he is in remand for want of production of proper sureties and in respect of the adverse case in Crime No.2268/2016, the detenu has moved a bail petition and the same is pending before the Court of Principal District and Sessions Judge, Chengalpattu. Further, the Detaining Authority, without furnishing full particulars, has placed reliance upon similar case where bail was granted by the Court of Principal District and Sessions Judge, Chengalpattu, in CrI.M.P. No. 12/2017. Therefore, according to the learned counsel, there is total non-application of mind on the part of the Detaining Authority in passing the order of detention and the same is liable to be set aside.

5. Heard the learned Additional Public prosecutor, who would submit that the order of detention has been passed on cogent and sufficient materials and the same has to be sustained.

6. We have considered the rival submissions. As rightly contended by the learned counsel for the petitioner, when a bail application is pending, it cannot be presumed that the detenu would come out on bail and mere pendency of the bail application would not enable the Detaining Authority to conclude that the Court would certainly grant bail to the detenu. It is nothing but pre-judging the matter. The Detaining Authority has also not furnished full particulars with regard to the bail granted in respect of so-called similar case. Further, the Detaining Authority has stated that there was imminent possibility of the detenu coming out on bail in the ground case by offering sufficient sureties. It is not known as to how the Detaining Authority had come to such a conclusion. Thus, in our considered view, without making proper application of mind relating to these facts, the Detaining Authority has passed the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 09.01.2017, passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Home, Prohibition & Excise
Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police/
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Pavendhan, Advocate Sr.37386

H.C.P.No.210 of 2017

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srg 13/06/2017