

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2166 of 2017

Kandasamy ... Petitioner

-vs-

State Rep. By:

1.The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

2.The District Magistrate
And District Collector,
Namakkal District,
Namakkal.

... 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 C.M.P.No.08/GOONDA/2017/M1 dated 18.08.2017 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu, Gowrisankar S/o.Kandasamy aged about 22 years now confined in Central Prison, Salem, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : M/s.S.Sengkodi

For Respondents: Mr.V.M.R.Rajentran

Additional Public Prosecutor

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 18.08.2017.

1.1.A perusal of the impugned detention order shows, that the subject case, is the only case, registered against the detenu. This case has been registered as Crime No.423 of 2017.

1.2.The detenu, in respect of this case, has been booked, under Section 397 r/w. Section 302 of I.P.C.

1.3.The record shows that the detenu was arrested on 26.06.2017.

2.Learned counsel for the petitioner, says, that the impugned order cannot be sustained, as not only there has been a delay in passing the detention order, but also for the reason that, neither was the translated copy of the remand order given, nor, was the application/or the order passed in the similar case, i.e., Crime No.390 of 2015, furnished to the detenu.

2.1.It is contended that the conclusion, drawn by the detaining Authority, that there was a real possibility of the detenu being enlarged on bail, was, also erroneous.

3.On the other hand, the learned Additional Public Prosecutor, relied upon, the impugned detention order and the records, to resist the petition.

4.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor. We have also perused the records.

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

(i)First, even though the detenu was arrested on 26.06.2017, the impugned detention order was passed on 18.08.2017. Notice in this petition was issued on 16.11.2017. Despite opportunity being granted, the State has not filed a counter affidavit. Resultantly, the delay, in passing the detention order, remains un-explained.

(ii) Second, the petitioner is right, in his assertion, that the translated copy of the remand order, was not supplied to the detenu. The petitioner, is also right, in his assertion, that the bail order passed in Crime No.390 of 2015, dated 06.11.2015, was not furnished, to the detenu. What was furnished, to the detenu, was, infact, a bail order passed by this Court, in Crl.O.P.No.5839 of 2016.

(iii) Third, Even according to the detaining Authority, no bail application had been filed, by the detenu, till the date, when the impugned order was passed. Thus, the conclusion drawn by the detaining Authority, that there was a real possibility of the detenu, being enlarged on bail, was according to us, flawed.

6.Therefore, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.08/Goonda/2017/M1, dated 18.08.2017, passed by the second respondent is set aside. The detenu, namely, Gowrisankar, son of Kandasamy, aged about 22 years, 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/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate
And District Collector,
Namakkal District,
Namakkal.
3. The Superintendent,
Central Prison, Salem.
4. The Additional Public Prosecutor,
Madras High Court, Madras.

sm:18.12.2017

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