

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2248 of 2017

R.Pradeep

... Petitioner

vs

1.State of Tamil Nadu, represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore City.

... Respondents

* * *

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus or direction holding the impugned order of detention passed in C.No.42/G/IS/2017, dated 29.05.2017, under the Tamil Nadu Act 14 of 1982 as highly arbitrary, illegal and unconstitutional and direct the respondents to produce the body of the detainee, namely, R.Pradeep, Male, aged 29 years, S/o.Ragu, Door No.44, 5th Street, Kamarajapuram, R.S.Puram, Coimbatore District, now confined in Coimbatore Central Prison, before this Court and set him at liberty, and to call for the records pertaining to the order of detention passed by the second respondent in C.No.42/G/IS/2017, dated 29.05.2017, and set aside the same.

* * *

For Petitioner : Mr.R.Subramoniam

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, whereby, challenge is laid to the detention order, dated 29.05.2017.

2. The record shows that the subject case, which is registered as Crime No.495 of 2017, is the only case, in which, the detainee is said to be involved. In so far as this case is concerned, the detainee has been booked under the Section 8(c) read with 20(b) (ii) (B) of the NDPS Act.

2.1. Furthermore, the record shows that the detainee was arrested on 03.05.2017. The record also shows that even, according to the Detaining Authority, no bail application was filed in Crime No.495 of 2017.

3. Given these circumstances, we have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. We have also perused the record.

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

(i) First, though, the detainee was arrested on 03.05.2017, the impugned detention order was passed on 29.05.2017. Notice in this petition was issued on 27.11.2017, despite which, no counter affidavit has been filed by the State to date. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even according to the Detaining Authority, no bail application was filed by the detainee in Crime No.495 of 2017. The apprehension entertained by the Detaining Authority that the detainee will be released on bail, since, in a "similar case", i.e., Crime No.137 of 2015, bail was granted, was, according to us, misplaced.

(ii)(a). Clearly, on the date, when the impugned order was passed, the detainee had not moved for bail in Crime No.495 of 2017. Therefore, the Detaining Authority, in our opinion, failed to apply its mind to relevant factors.

(iii) Third, though, the sample was taken on 03.05.2017, it was sent to the concerned Court only on 11.05.2017. The delay in sending the sample remains unexplained in this case, working to the detriment of the detainee's interest.

5. Thus, as indicated above, 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 C.No.42/G/IS/2017, dated 24.05.2017, passed by the second respondent is set aside. The detenu, namely, R.Pradeep, S/o.Ragu, aged about 29 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-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore City.
- 3.The Joint Secretary,
Public Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Additional Public Prosecutor,
Madras High Court,
Madras.

+1cc to Mr.C.S.S.PILLAI Advocate, S.R.No. 92372

H.C.P.No.2248 of 2017

TR(22/12/2017)