

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.2310 of 2017

Praveen

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai Police,
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 entire records, relating to petitioner's friend detention under Tamil Nadu Act 14 of 1982 vide detention order dated 01.04.2017 on the file of the second respondent herein made in proceedings BCDFGISSSV No.102/2017 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's friend namely Sathish (a) Kili son of Ramesh aged 23 years before this Court and set the petitioner's friend at liberty from detention, now petitioner's friend detained at Central prison-II, Puzhal, Chennai-600 066.

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

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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 01.04.2017.

2. A perusal of the detention order would show that one (1) adverse case is noted qua the detenu. These being : Crime No.256 of 2017.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.270 of 2017.

4. The record shows that the detenu was arrested on 24.01.2017

4.1. A perusal of the record further demonstrates that, even according to the Detaining Authority, the detenu, on the date when the impugned order was passed, had not moved bail applications either in Crime No.256 of 2017 or in Crime No.270 of 2017.

5. Given this background, we have heard the arguments both on behalf of the 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, even though the detenu was arrested on 24.01.2017, the impugned order was passed on 01.04.2017. Notice in this petition was issued on 05.12.2017. The State, for the reasons best known, has not filed a counter affidavit in the matter. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even though the Detaining Authority itself notices that no bail application was filed, it has erroneously come to the conclusion that there was a real possibility of the detenu being enlarged on bail, since bail had been granted to the co-accused. There is, even in this regard, non-application of mind, as the name of the co-accused is, wrongly, shown as Sathish @ Kili in the detention order. This is, in fact, the name of the accused.

6. Thus, for the foregoing reasons, 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 BCDFGISSSV No.102/2017 dated 01.04.2017, passed by the second respondent is set aside. The

detenu, namely, Sathish @ Kili, S/o.Ramesh, male, aged about 23 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/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 3.The Director General of police,
Chennai-4
- 4.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai-600 007.
- 5.The Superintendent,
Central Prison II,
Puzhal, Chennai.
[In duplicate for communication to the detenu]
- 6.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.2310 of 2017

NR 15/12/2017

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