

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

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

H.C.P.No.346 of 2017

Kokila

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep.by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai -600 009
2. The District Collector and District Magistrate,
Salem District, Salem. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to call for the records made in C.M.P.No.11/D.O/C2/2017 dated 20.02.2017 on the file of the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Senthil Kumar, son of Chinna Thambi, now confined at Central Prison, Salem before the Court and set him at liberty to secure the ends of justice.

For Petitioner : Ms.Senkodi for Mr.R.Sankarasubbu

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

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

1. The petitioner is the wife of the detenu, i.e., Senthil @ Senthilkumar, Male, aged about 37 years. The detenu has been detained by the second respondent by his order in C.M.P.No.11/D.O/C2/2017, dated 20.02.2017, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus 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. The learned counsel appearing for the petitioner would submit that the bail application filed by the petitioner was dismissed on 25.01.2017. Thereafter, the detenu has not filed any bail application. However, the detaining authority by relying on a similar case like the ground case registered at Attaiyampatti Police Station in Crime No.266 of 2016 u/s 20(b) (ii)(B) NDPS ACT has come to the conclusion that there is real possibility of the detenu coming out on bail.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in the ground case in Crime No.546 of 2016 before the Attaiyampatti Police Station, no fresh bail application has been filed so far. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that when no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. Further, the facts involved in the case relied on by the detaining authority as a similar case are totally different. In that case, stringent condition was imposed while granting bail. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.11/D.O./C2/2017, dated 20.02.2017, passed by the second respondent is set aside. The detenu, i.e., Senthil @ Senthilkumar, aged about 37 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/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai -600 009
2. The District Collector and District Magistrate,
Salem District, Salem.
3. Jail Superintendent, Central Prison, Salem
4. The Public Prosecutor
High Court, Madras.
5. The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9

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SKV(CO)
NR 05/10/2017

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