

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM:

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

H.C.P. No.663 of 2017

Ganesan

... Petitioner

-vs-

1.The State of Tamil Nadu
Represented by its Secretary to Government
Prohibition and Excise Department (Home)
Fort St.George, Chennai - 600 009

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.123/BCDFGISSSV/2017 dated 04.4.2017, on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner Ganesan, S/o. Kasi, aged about 29 years, who now detained in Central Prison, Puzhal, Chennai before this Court.

For Petitioner: Mr.Ilayaraja Kandasamy
for Mr.K.Gandhi Kumar

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

सत्यमेव जयते
O R D E R

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

The petitioner is the mother of the detenu, namely, Ganesan, S/o. Kasi, Male, aged about 29 years. The detenu has been detained by the 2nd respondent by his order in BCDFGISSSV No.123 of 2017 dated 04.4.2017, holding him to be a "Goonda", as contemplated under 2(f) 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. The learned counsel for the petitioner would submit that the detenu has not moved any bail application as on the date of passing of the detention order. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take him out on bail by filing bail application in the ground case. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is no imminent possibility of the detenu coming out on bail in the said case. Hence, it is stated that the Detaining Authority has passed the impugned order of detention in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail, is a mere ipse dixit without any cogent materials.

4. 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.

5. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the order of detention, no bail application was pending in the ground case. Though the detaining authority has made reliance on similar case in which accused was granted bail, the facts involved in that case are different. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Therefore, on this ground, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV NO.123 OF 2017, dated 04.04.2017, passed by the 2nd respondent is set aside. The detenu, namely, Ganesan, son of Kasi, aged about 29 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 VIII)

/true copy/

Sub Asst. Registrar

To:

1. The Secretary
Prohibition and Excise Department (Home)
Fort. St.George, Chennai - 600 009
2. The Commissioner of Police
The Commissioner Office, Vepery, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai
4. The Public Prosecutor,
Madras High Court,
Madras
5. The Joint Secretary to Govt,
Public (Law & Order)
Fort St.George, Chennai-9

H.C.P.No. 663 of 2017

RSI (CO)
NR 12/10/2017



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