

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2017

CORAM:

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

H.C.P.No.676 of 2017

Selvam

... Petitioner

-vs-

1.The State of Tamil Nadu,
rep. by Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Magistrate and
The District Collector,
Villupuram District,
Villupuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to produce the body of the detenu namely rajadurai @ Ayyanar before this Court and set him at liberty forthwith, by calling for the records pertaining to the detention order dated 30.03.2017 made in No.C2/9005/2017 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.K.S.Karthik Raja

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

O R D E R

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

The petitioner is the father of the detenu, namely, Rajadurai alias Ayyanar son of Selvam, Male, aged about 22 years. The detenu has been detained by the second respondent by his order in No.C2/9005/2017 dated 30.03.2017, holding him to be a "Goonda", as contemplated under Section 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. 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 there is no bail application pending and hence there is no imminent possibility for the detenu to come out on bail. But the detaining authority in the grounds of detention has stated that the detenu is likely to come out on bail. The learned counsel would further submit that the detenu is already in judicial custody as an under trial prisoner and imminent possibility of his release on bail is not enough for the detaining authority to pass the impugned order. However, the detaining authority by relying on the release of co-accused on bail in a similar case, has come to the conclusion that there is real possibility of the detenu coming out on bail. So, the above are squarely show that there is non-application of mind on the part of the detaining authority in passing the order of detention.

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.10 of 2017 before Vikravandi Police Station, no bail application has been filed so far on behalf of the petitioner. 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 for the release of other accused in a similar case are totally different. 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 No.C2/9005/2017 dated 30.03.2017, passed by the second respondent is set aside. The detenu, namely, Rajadurai alias Ayyanar, son of Selvam, 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.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ggs

To:

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Magistrate and
The District Collector,
Villupuram District,
Villupuram.
3. The Superintendent, Central Prison, Cuddalore.
(in duplicate for communication)
4. The Joint Secretary to Government
Public(Law and order)
Fort. St. George
Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.K.S. Karthick Raja, Advocate sr 72560.

H.C.P.No.676 of 2017

SP(10/10/2017)