

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM

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

H.C.P.No.677 of 2017

A.Tamilselvi

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai -9

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents herein to produce the body of the detenu, namely, Semmal before this Court and set him at liberty forthwith, by calling for the records pertaining to the detention order dated 21.3.2017 made in No.C2/7955/2017 passed by the 2nd respondent, quash the same.

For Petitioner : Mr.K.S.Karthik Raja

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

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O R D E R
[Order of the Court was made by RAJIV SHAKDHER, J.]

The petitioner, who is the mother of the detenu, namely, Semmal, S/o.Asaithambi, age 26 years, challenges the impugned order of detention, dated 21.3.2017 in C2/7955/2017, detaining her son as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Boot leggers,

Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

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 for the petitioner would submit that the bail application filed by the detenu in ground case was dismissed on 15.3.2017 and thereafter, no fresh bail application has been filed by him. But the detaining authority in the grounds of detention has stated that the detenu is likely to come out on bail, which shows non application of mind on the part of the detaining authority.

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 the Vikravandi 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 C2/7955/2017 dated 21.3.2017, passed by the 2nd respondent is set aside. The detenu, namely, Semmal, Son of Asaithambi, aged about 26 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/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai -9
2. The District Magistrate and
The District Collector
Villupuram District, Villupuram
3. The Superintendent,
Central Prison, Cuddalore (By Fax)
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor
High Court, Madras.

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.72561

H.C.P.No.677 of 2017

GJ II(CO)
CA(10/10/2017)

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