

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2017

Coram

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

H.C.P.No.850 of 2017

Kumar

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. By the Secretary,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.

2.The Commissioner of Police,
The Commissioner Office,
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.214/BCDFGISSSV/2017, dated 25.04.2017 passed by the 2nd respondent against the detenu, Thivakar, S/o.Kumar, aged 24 years, now confined in Central Prison, Puzhal, Chennai and to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Kaveri Selvam
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

सत्यमेव जयते
O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

1.This is a petition, which seeks to assail the order of detention dated 25.04.2017 passed in No.214/BCDFGISSSV/2017 by the second respondent in exercise of his powers conferred under Section 3(1) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short 'Tamil Nadu Act 14 of 1982). The said detention order has been passed under Section 2 (f) of the Tamil Nadu Act 14 of 1982, branding the detenu as a "Goonda". The detenu has been in custody since 14.03.2017.

2.The petitioner, who is the father of the detenu, has assailed the order of detention on the ground that it has been passed without application of mind and contrary to law.

3.A perusal of the detention order shows that the detaining authority has taken note of three adverse cases (Cr.Nos.156/2017, 86/2017, 407/2017) qua the detenu. In all the three cases, the detenu is said to have committed an offence under Section 379 of the Indian Penal Code. In so far as the case in respect of which the detenu has been detained is concerned, the offences said to have been committed by the detenu are under Sections 341, 294(b), 323, 336, 392, 397 and 506(ii) of the Indian Penal Code, which case has been registered as Cr.No.418/2017.

4.Learned counsel appearing on behalf of the detenu says that there has been a total non-application of mind by the detaining authority, In this behalf, our attention has been drawn to paragraph 4 of the impugned order.

5.On the other hand, learned Additional Public Prosecutor, relies upon the detention order to resist the petition.

6.We have perused the detention order. A perusal of the detention order shows that there is indeed non-application of mind by the detaining authority. This is discernible from the fact that even though in the subject case, i.e., Cr.No.418/2017, the Court of Principal Sessions, Chennai, had granted bail to the detenu, vide order dated 24.04.2017 (CrI.M.P.No.6749/2017), the detenu, obviously, could not avail of its benefit, as on the very next day, he was detained by the respondents by invoking the provisions of Tamil Nadu Act 14 of 1982. As a matter of fact, the detaining authority itself records in the impugned order that the detenu could not avail of the bail order, to which we have made a reference above, since sureties could not be offered by him.

7.This apart, in so far as Cr.No.407/2017 is concerned, which is one of the adverse cases noted in the impugned order, even according to the detaining authority, bail application in that matter is pending adjudication.

8.Furthermore, the detaining authority seems to have been burdened by the fact that in a similar case, which pertains to 2015, bail was granted.

9.According to us, as noted above, there has been a complete non-application of mind. The fact that in a similar case, bail was granted in 2015, cannot have any bearing on the matter pertaining to the detention of the detenu. Furthermore, as

indicated above, even according to the detaining authority, the benefit of the bail granted to the detenu in Cr.No.418/2017 could not have been availed of, as he was unable to furnish sureties and the detention order was passed on the very next date, i.e., 25.04.2017.

10.For all the foregoing reasons, we are inclined to quash the impugned order of detention and allow this Habeas Corpus Petition.

11.In the result, the Habeas Corpus Petition is allowed and the order of detention dated 25.04.2017 passed in No.214/BCDFGIISSSV/2017 by the second respondent is set aside. The detenu, namely, Thivakar, Son of Kumar, male aged about 24 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(CO)

True Copy

Sub-Assistant Registrar

sra

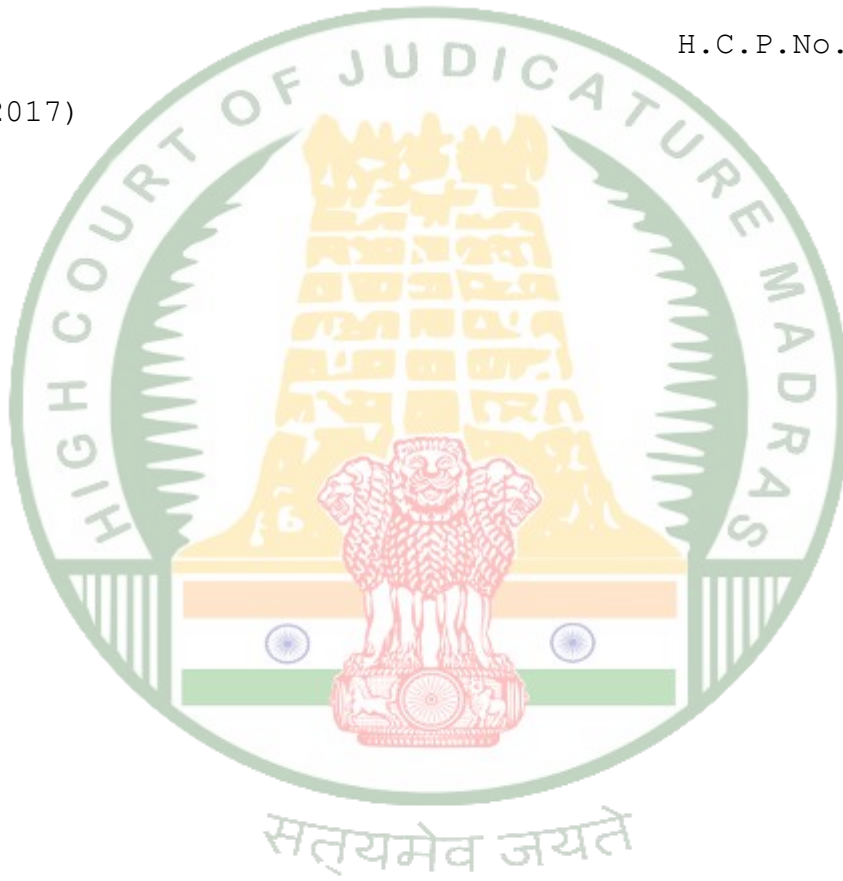
To

- 1.The Secretary to Government,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai 600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
(In duplicate for communication to detene)
- 4.The Public Prosecutor,
Madras High Court, Chennai.

5. The Joint Secretary to government
Public(Law and order)
Fort. st. George
Chennai 9.

H.C.P.No.850 of 2017

SP(31/10/2017)



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