

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 209 OF 2018

Ananthi .. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By its Secretary to Govt.
Home, Prohibition & Excise Dept.
Fort St. George, Chennai - 9.
2. The Commissioner of Police
Greater Chennai
Chennai. ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records on the file of the 2nd respondent passed in detention No.653/BCDFGISSSV/2017 dated 25.10.2017 relating to the detention of Barath, S/o Mani, aged 32 years, lodged in Central Prison, Puzhal, Chennai, and direct the 2nd respondent to produce the body of the detenu, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. T.Muruganantham
For Respondents: Mr. R.Prathap Kumar, Addl.PP

सत्यमेव जयते
ORDER
(DELIVERED BY DR. S.VIMALA, J.)

The present habeas corpus petition has been preferred by the petitioner challenging the detention order dated 25.10.2017 passed by the 2nd respondent in and by which the 2nd respondent, detained the detenu, Barath, S/o Mani, as a 'Goonda' under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. The order of detention has been passed on 25.10.2017 in which it is stated that three cases are pending against the detenu herein. It is pointed out by the learned counsel for the

petitioner that no bail application has been filed by the accused. Therefore, the apprehension on the part of the detaining authority that the detenu is likely to be released on bail is not borne out by record and the subjective satisfaction arrived at is vitiated. It is further pointed out that in one of the case, the allegation against the detenu is that he was guilty of extortion of Rs.1,000/-, which is mentioned in para-3 of the grounds of detention. It is the contention of the learned counsel for the petitioner that the number of cases pending against the detenu is immaterial and what is material is whether there is an imminent possibility of the detenu coming out on bail. It is submitted that no bail application having been filed by the detenu, the subjective satisfaction expressed by the detaining authority that there is real and imminent possibility of the detenu coming out on bail in the is not borne out by record and this vitiates the order of detention.

3. It is further contended by the learned counsel for the petitioner that there is procedural violation while ordering detention, as the arrest of the detenu has not been communicated to the wife of the detenu. The the respondents claim that a SMS was sent to the wife, neither there is any proof of receipt by the wife nor the contents of the message is made available either before the detaining authority or before this Court.

4. Counter affidavit has been filed on behalf of the 2nd respondent mentioning the details of the case in which the detenu has been arrested. This Court heard the learned Addl. Public Prosecutor on the above submission.

5. It is incumbent on the part of the detaining authority to pass an order of detention based on the materials available on record. However, in the case on hand, the detention has been passed by the detaining authority referring to the imminent possibility of the detenu coming out on bail, though no bail application has been moved by the detenu.

6. In the case of Rekha - Vs - State of T.N. & Anr. (2011 (5) SCC, the Supreme Court has held that where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail, who is already in custody provided he has moved a bail application which is pending.

7. In the case on hand, in the absence of any evidence showing that bail application is pending, the omission of the detaining authority to consider the real possibility of the detenu coming out on bail vitiates the order of detention. The said omission, as rightly contended by the learned counsel for the petitioner, would vitiate the order of detention. Further,

there is no proof of communication of the arrest of the detenu to the wife/relatives. On the above grounds, the order of detention is liable to be set aside.

8. Accordingly, the habeas corpus petition is allowed and the impugned order of detention made in No.653/BDFGISSSV/2017 dated 25.10.2017 is set aside. The detenu Barath, S/o Mani, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Govt.
Home, Prohibition & Excise Dept.
Fort St. George, Chennai - 9.

2. The Commissioner of Police
Greater Chennai, Chennai.

3. The Superintendent of Police
Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government,
Public (Law & Order) Fort St. George,
Chennai -9

5. The Public Prosecutor,
High Court, Madras 104.

PPA(CO)

sm:12.7.2018

सत्यमेव जयते

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