

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:19.01.2018
CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2285 of 2017

Shanthi

... Petitioner

-vs-

1.The Principal Secretary to Government [Home]
Prohibition and Excise Department (XVI)
Fort St George, Chennai 600 009.

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

... 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 order of detention C.M.P.NO.64/B.L.A./C2/2017 dated, 14/11/2017 passed by the 2nd respondent and to quash the same and also to direct the detenu KANNAN, S/O.PERIYASAMY, AGED 46 YRS,, who is presently detained in the CENTRAL PRISON SALEM to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.D.Veerasekaran

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

ORDER

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

The petitioner, who is the wife of the detenu, namely, Kannan, son of Periyasamy, age 46 years, challenges the impugned order of detention, dated 14.11.2017 in C.M.P.No.64/B.L.A/C2/2017 detaining her husband as "BOOTLEGGERS", as contemplated under Section 2(b) 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. A perusal of the Grounds of Detention would reveal that the subject case was registered against the detenu for the offences u/s.4(1)(aa), 4(1-A) of Tamil Nadu Prohibition Act in Cr.No.622 of 2017. Though the bail application was pending on the date of detention, the detaining authority came to the conclusion there is a likelihood of the detenu being released on bail, as in similar case, bail had been granted to the detenu. It is to be noted that in similar case theory cannot be applied mechanically. Bails are normally granted based on the facts and circumstances of each case. Such similarity theory cannot be adopted by the detaining authority without any materials. It is further to be noted that though the alleged samples were seized on 28.10.2017, the same were sent to the Court on 31.10.2017 and reached the forensic lab only on 21.11.2017. The delay in despatching the samples remains unexplained. It is further to be noted that detenu was arrested on 28.10.2017 and detention order has been passed only on 14.11.2017. It is also remains unexplained. All these facts clearly indicates the non application of mind by the Detaining Authority. Hence, we are inclined to set aside the detention order.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.NO.64/B.L.A./C2/2017 dated 14.11.2017, passed by the second respondent is set aside. The detenu, namely, Kannan, son of Periyasamy, aged about 46 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KMI

To:

- 1.The Principal Secretary to Government [Home]
Prohibition and Excise Department (XVI)
Fort St George, Chennai 600 009.
- 2.The District Magistrate and
District Collector,
Salem District
- 3.The Superintendent, Central Prison, Salem
- 4.The Joint Secretary to Government Public (Law and Order)
Fort St.George, Chennai-9.
- 5.The Public Prosecutor
High Court, Madras.

sm:19.2.2018

H.C.P.No.2285 of 2017



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