

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2286 of 2017

Tmt.M.Kala

... Petitioner

-vs-

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, Vepery
Chennai 600007.

... 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 Memo No.670/BCDFGISSSV/2017 dated, 31/10/2017 passed by the 2nd respondent and to quash the same and also to direct the detenu Dhina @ Dhineshkumar, S/o.Mahalingam, Aged 21 Yrs, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.V.Parthiban

For Respondents: Mr.M.R.Rajentran

Additional Public Prosecutor

सत्यमेव जयते

ORDER

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

The petitioner, who is the mother of the detenu, namely, Dhina @ Dhineshkumar, son of Mahalingam, age 21 years, challenges the impugned order of detention, dated 31.10.2017 in No.670/BCDFGISSSV/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. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.1847/2017 on 24.09.2017, whereas the detention order was passed on 31.10.2017, i.e. after a lapse of one month. This inordinate delay in passing of detention order would vitiate the same. Further, the Grounds of Detention would reveal that 4 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.1847/2017 for the offences u/s.147, 148, 302 and 506[ii] IPC. Admittedly, the detenu has not moved any bail applications in the adverse cases. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the adverse cases. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Hence, we are of the view that the detention order is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.670/BCDFGISSSV/2017 dated 31.10.2017, passed by the second respondent is set aside. The detenu, namely, Dhina @ Dhineshkumar, son of Mahalingam, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To:

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery
Chennai 600007.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Superintendent Central Prison,
(Puzhal) Chennai.
- 5.The Joint Secretary to Government,
Public (Law and Order)
Fort. St George, Chennai-9.

H.C.P.No.2286 of 2017

CNR(CO)
GN(26/02/2018)



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