

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

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

H.C.P.No.2386 of 2017

Rajaprabhu @ Kullar

.. Petitioner

vs.

1.The State of Tamil Nadu
rep.by its Secretary to Government,
Home, Prohibition & Excise Department
Chennai 600 009.

2.The Commissioner of Police
Greater Chennai,
Chennai- 600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the body of detention i.e., Rajaprabhu @ Kullar, male aged 32 years, son of Rajendran, No.33/05, Gudan Street, Pudhu Street, Kodambakkam, Chennai-24 detained as per detention order made in Memo No.609/BCDEGISSSV/2017 dated 07-10-2017 passed by the 2nd respondent, before this Court and aside the order and set him at liberty from the Central Prison, Puzhal, Chennai

For petitioner : Mr.V. Sivalingam

For RR1 & 2 : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. SATHISH KUMAR, J.)

Petitioner, viz., Rajaprabhu @ Kullar, son of Rajendran, male, aged 32 years, has filed this Petition challenging the order of detention passed by the 2nd respondent in No.609/BCDEGISSSV/2017, dated 07.10.2017, branding him as a "Goonda" as contemplated u/s.2[f] 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 [Tamil Nadu Act 14 of 1982].

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of non-application of mind on the part of the detaining authority in passing the order of detention. According to the learned counsel for the petitioner, the petitioner was arrested on 04.09.2017; whereas the detention order was passed on 07.10.2017 i.e., after a lapse of month. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court reported in 2005 MLJ (Cr1.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another). Hence, on the above grounds, the detention order is liable to be set aside.

3. Per contra, the learned Additional Public Prosecutor while reiterating the averments 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.

4. 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 Cr.No.1211 of 2016 of E.2 Royapettah Police Station, registered under Section 379 I.P.C. bail was granted by the XVIII Metropolitan Magistrate, Saidapet, Chennai, and in Cr.No.894 of 2017 registered under sections 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC of G.7 Chetpet Police station, bail was granted by the Principal Sessions Judge, Chennai, the detaining authority inferred that the relatives of the petitioner are taking action to file fresh bail applications Cr.Nos.316 of 2017, 424 of 2017 and 1220 of 2017 and there is a possibility of coming out on bail, would be a mere ipse dixit and that would vitiate the order of detention.

5. Admittedly, at the time of passing the Detention Order, no bail application was pending in the adverse cases and the ground case. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Even if a bail application is pending then it is only a logical conclusion that there is likelihood of the person in custody would be released on bail. In this case, the petitioner was arrested on 04.09.2017; whereas the detention order was passed on 07.10.2017 i.e., after a lapse of month. This inordinate delay in passing of detention order remains

unexplained. Further, there is no counter filed in this case since the notice taken by the learned Additional Public Prosecutor on 14.12.2017. In such view of the matter, the impugned detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.609/BCDFGISSSV/2017 dated 07.10.2017, passed by the 2nd respondent is set aside. The detenu, namely, Thiru. Rajaprabhu @ Kullar, son of Rajendran, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai,
Chennai- 600 007.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai 9.

+1cc to Mr.V.SHIVALINGAM, Advocate, S.R.No. 7797

H.C.P.No.2386 of 2017

KGK(CO)
TR(28/02/2018)