

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

Coram

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

H.C.P.No.1372 of 2017

Sumathy

... Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai - 600 009.

2.District Collector & District Magistrate,
Dharmapuri District,
Dharmapuri.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent 06.07.2017 in S.C.No.24/2017 against the petitioner son Kishoth @ Perumal, male, aged 24 years, S/o.Lakshmanan, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

O R D E R

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

1. This is a petition filed to challenge the detention order dated 06.07.2017.

2. The subject case, appears to be the only case, registered against the detenu. The subject case is numbered as Crime No.114 of 2017.

3. The record shows that the detenu was arrested on 06.06.2017. Furthermore, a perusal of the record shows that the

detenu's first bail petition, which was moved before the Fast Track Mahila Court, Dharmapuri, was dismissed on 30.06.2017. The record also shows that the detenu moved yet another bail petition before the same Court, which met with the same fate and was dismissed on 05.07.2017.

3.1. The impugned detention order was passed, as is discernible from the record, immediately, thereafter, i.e., on 06.07.2017.

4. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. We have also perused the record.

4.1. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 06.06.2017, the impugned order was passed after a month i.e., on 06.07.2017. We had issued notice in this petition on 30.11.2017, despite which, no counter affidavit has been filed. Consequently, the delay in passing the impugned order remains unexplained.

(ii) Second, as indicated above, the detenu had moved the concerned Court for grant of bail twice. The first bail petition was dismissed on 30.06.2017, while the second bail petition was dismissed on 05.07.2017. The Detaining Authority, however, has come to the conclusion, in our view erroneously, that there was a real likelihood of the detenu being enlarged on bail, despite noting the fact that both bail petitions were dismissed by the concerned Court. There is according to us, total non application of mind. As noted above, the second bail petition was, in fact, dismissed, one day before the impugned order was passed. Consequently, on the date, when, the impugned order was passed, there could not have been any possibility of the detenu being enlarged on bail.

(ii) (a) Furthermore, the "similar case" test applied by the Detaining Authority, according to us, is flawed, as bail is granted by a Court not by looking at the Sections involved in one case or the other, but by examining circumstances, such as the gravity of offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

5. Thus, for the aforesaid reasons, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.24/2017, dated 06.07.2017, passed by the second respondent is set aside. The detenu, namely, Kishoth @ Perumal, S/o.Lakshmanan, male, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with another 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai - 600 009.
- 2.District Collector & District Magistrate,
Dharmapuri District,
Dharmapuri.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Salem.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1372 of 2017

aa07/12/2017