

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.10.2017

Coram

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

H.C.P.No.1403 of 2017

V.Sangeetha

... Petitioner

Vs.

1.State, rep. By its Secretary to Govt.,
Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling upon the production of the records passed by the second respondent dated 03.07.2017 in CMP.No.41/Goonda/C-2/2017 against the detenu Veerasamy, Male aged 28 years, S/o.Muniyappan, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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

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O R D E R

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

The petitioner is the wife of the detenu, namely, Veerasamy, Son of Muniyappan, male aged about 28 years. The detenu has been detained by the second respondent by his order in C.M.P.No.41/Goonda/C2/2017 dated 03.07.2017, holding him to be a

"Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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. The learned counsel for the petitioner made only one submission that the detention order has been passed by the detaining authority without application of mind inasmuch as granting of bail was negated on two occasions and the third application was pending, but relying on the bail granted in similar case to some other accused, the detention order was passed against the detenu and on this ground alone, the order of detention is vitiated.

4. The learned Additional Public Prosecutor 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.

5. On a perusal of the impugned order of detention, we find that admittedly, the bail application filed by the detenu in C.M.P.No.198 of 2017 was dismissed on 24.05.2017 by the Vacation Sessions Judge, Salem and the bail application filed in CrI.O.P.No.10168/2017 before this Court was dismissed on 05.06.2017. Further, the second bail application filed before this court in CrI.O.P.No.11865/2017 is still pending. Whereas, the detaining authority taking into consideration the similar cases where bail was granted to some other accused, i.e., Kathiravan and Vijay, in CrI.O.P.No.6161/2015 on 13.03.2015, which is much prior to the alleged occurrence in this case pursuant to which the detenu was arrested, has passed the impugned order of detention, which clearly exhibits the non-application of mind on the part of the detaining authority. On this ground alone, the detention order is liable to be quashed.

6. That apart, the alleged occurrence is said to have taken place on 25.04.2017 and pursuant to the confession, the detenu was arrested on 08.05.2017 and thereafter, the detention order was passed on 03.07.2017 with inordinate delay, which remains unexplained. It is to be noted that there is no adverse case pending against the detenu.

7.Furthermore, despite notice being ordered in this petition on 02.08.2017, no counter-affidavit has been placed before this Court to date, despite several opportunities being given since 02.08.2017.

8.For all these reasons, we are inclined to allow this habeas corpus petition.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.41/Goonda/C2/2017 dated 03.07.2017 passed by the second respondent is set aside. The detenu, namely, Veerasamy, Son of Muniappan, male aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other 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 III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai-9.

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

3.The Superintendent,
Central Prison, Salem.

4.The Public Prosecutor,
Madras High Court,
Chennai.

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

H.C.P.No.1403 of 2017

SS(27/10/2017)