

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2017

Coram

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

H.C.P.No.1424 of 2017

Nasrin Banu

... Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai, Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai-600 007.
2. The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
3. The Superintendent of Central Prison,
Puzhal, Chennai.

... Respondents

* * *

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records of the first respondent relating to Detention Order bearing No.BCDFGISSSV No.411, dated 12.07.2017, and quash the same, and direct the respondents to produce the body of the detenu Azarudeen son of Mohammed Kasim, aged 29 years, now detained in the Central Prison, Puzhal, Chennai, under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) before this Court and set him at liberty forthwith.

* * *

For Petitioner : Mr.M.Abdul Nazeer

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, which seeks to assail the detention order dated 12.07.2017.

2. Notice in this petition was issued on 04.08.2017, despite which, the State has not filed a counter affidavit to date. Therefore, the assertions made in the petition have remain untraversed.

3. A perusal of the impugned detention order would show that the detenue has been booked for the offences under Sections 52 (A), 68 (A), 51 r/w 63(a) and 65 of Copy Right Act, 1957 and 292 (2)(a) of the IPC, in CCB Crime No.205 of 2017. The detenue was, admittedly, arrested on 08.07.2017.

4. A perusal of the paragraph 3 of the impugned order shows that the detaining authority has entertained apprehension that the detenue may be released on bail for the reason that bail application (Crl.M.P.No.1216 of 2017), was pending on the date, when, the detention order is passed. This apart, it is also noted in the impugned order that, since, bail was granted in a similar case, there is likelihood of the detenue being enlarged on bail.

4.1. Learned counsel would submit that apart from what is noted above, there was a delay in passing the detention order.

5. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and also examined the record.

6. The assertion in the impugned order that bail petition (Crl.M.P.No.1316 of 2017) was pending, on the date, when the detention order was passed is incorrect. A certified copy of the order passed in Crl.M.P.No.1316 of 2017, has been placed before us. The order is dated 12.07.2017. A perusal of the order would show that the said bail petition was, actually, dismissed and was not pending on the date, when, the impugned order was passed, as noted by the detaining authority.

7. Furthermore, what has also been brought to our notice is that, the detention order qua the co-detenue has been quashed by us on 23.10.2017 in H.C.P.No.1359 of 2017. A copy of the order dated 23.10.2017, bearing out this fact, has been placed before us.

7.1. This aspect is not disputed by the learned Additional Public Prosecutor.

8. Therefore, clearly, the detention order has been passed without due application of mind, in as much as, it records that CrI.M.P.No.1216 of 2017, was pending, whereas, it was dismissed.

8.1. The other reason, which made us to come to the conclusion, is that the detention order needs to be set aside is the fact that it has been passed nearly, four (4) days, after the detainee was arrested. The delay is not explained. Furthermore, the so-called similarity in cases has not impressed us, as that case relates to 2015. As indicated above, the co-detainee has also been released vide order dated 23.10.2017 (H.C.P.No.1359 of 2017).

8.2. This apart, as noted right at the beginning, no counter-affidavit has been filed by the State. Resultantly, the assertions made in the petitioner have remained untraversed.

9. Therefore, for the aforementioned reasons, we are inclined to quash the impugned order. It is ordered accordingly.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.411, dated 12.07.2017, passed by the first respondent is set aside. The detainee, namely, Azarudeen, S/o.Mohammed Kasim, male, aged about 29 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 Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu
Secretariat, Fort St. George,
Chennai - 9.

2. The Commissioner of Police,
Greater Chennai, Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai-600 007.

3.The Joint Secretary,
Public Law and Order Department,
Government of Tamil Nadu
Secretariat, Fort St. George,
Chennai - 9.

4.The Superintendent,
Central Prison, Puzhal, Chennai.

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

+1 cc to Mr.M.Abdul Nazeer Advocate sr 79872

H.C.P.No.1438 of 2017

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