

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2017

Coram

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

H.C.P.No.1432 of 2017

T. Lilly

... Petitioner

Vs.

1.The District Collector and District Magistrate,
Kancheepuram District

2.The Home Secretary to the Govt. of Tamil Nadu,
Prohibition and Excise Department,
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 in BCDFGISSSV No.53/2017 dated 18.06.2017 and set aside the order of detention passed therein against the detenu by name Robin, S/o Thanigaimani, Christian, aged about 22 years, quash the same and setting him at liberty.

For Petitioner : Mr.S. Senthil Vel

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

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सत्यमेव जयते
O R D E R

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

1. The petitioner is the mother of the detenu , namely, Robin, Male, aged 22 years, S/o Thanigaimani. The detenu has been detained by the first respondent by his order in Memo No.BCDFGISSSV No.53/2017 dated 18.06.2014 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. In the impugned order, three adverse cases have been noted qua the detenu : these being : Cr.Nos.1000/2016, 1001/2016 and 390/2017. In all the three cases, the detenu has been booked under Section.379 of the IPC.

3. Insofar as the subject case is concerned, which is registered as : Cr.No.394/2017, the detenu has been booked under Sections 341, 392, 397, 294(b), 323, 506(ii) of the IPC.

4. A perusal of the impugned order would show that the detenu was arrested on 08.05.2017. Furthermore, paragraph five (5) of the impugned order shows that the detenu has not moved any bail application, despite this, observation being made the detaining authority has entertained an apprehension that the detenu was likely to be enlarged on bail based on the statement made by the petitioner before the investigating officer that she intended to file bail application concerning the detenu.

4.1. Furthermore, according to the detaining authority, this apprehension gets strengthened as in a similar case, bail was granted to another accused on 07.04.2017 in CMP No.502 of 2016.

5. We perused the records and also heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

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

(i) First, the detenu was arrested on 08.05.2017, whereas, the impugned order was passed on 18.06.2017. Clearly, there has been delay in passing the impugned order.

(ii) Second, in so far as the subject case is concerned, i.e. Cr.No.394/2017, admittedly, the detenu had not moved a bail application on the date of passing of impugned order. The reason articulated in the impugned order by the detaining authority based on which, it entertained the apprehension that the detenu may be enlarged on bail, is that, in a similar case bail was granted to another accused on 07.04.2016. In our view, given the facts set out above, the conclusion reached by the detaining authority that there was real and imminent possibility of the detenu being enlarged on bail is flawed.

7. Furthermore, we may note that though notice in this petition was issued on 04.08.2017, till today, the State has not filed a counter affidavit in the matter. Clearly, the assertions made in the captioned petition remain uncontroverted.

8. Thus, for the foregoing reasons, the detention order is liable to be set aside. It is ordered accordingly.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No. BCDFGISSSV No.53/2017 dated 18.06.2017 passed by the first respondent is set aside. The detenu, namely, Robin, Male, aged 22 years, S/o Thanigaimani is directed to be released forthwith unless his detention is required in 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

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To

1. The District Collector and District Magistrate,
Kancheepuram District
2. The Home Secretary to the Govt. of Tamil Nadu,
Prohibition and Excise Department,
Chennai
3. The Superintendent of Central Prison,
Vellore
4. The Public Prosecutor, Madras High Court,
Chennai.

HCP No.1432 of 2017

TR(22/11/2017)

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