

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

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

H.C.P.No.1499 of 2017

Selvaraj

... Petitioner

Vs.

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

2.The Commissioner of Police
Greater Chennai Police.

... 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 21.07.2017 in Memo No.432/BCDFGISSSV/2017 against the petitioner son Kandhan, Male aged 26 years, S/o.Selvaraj, who is confined at Central Prison, Puzhal II, Chennai 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, which seeks to challenge the detention order dated 21.07.2017.

2. Qua the detenu, two (2) adverse cases have been noted. These being : Crime No.1656 of 2017 and Crime No.1366 of 2017.

3. Insofar as the subject case is concerned, it is registered as Crime No.1670 of 2017. The record shows that the detenu was arrested on 29.05.2017.

4. The counsel for the petitioner argues that the conclusion arrived by the Detaining Authority that there was likelihood of the detenu being enlarged on bail is flawed. For this purpose, he refers us to paragraph No.4 of the impugned order.

5. On the other hand, the learned Additional Public Prosecutor resists the petition by relying upon the impugned order.

6. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and also examined the records. According to us, the impugned order cannot be sustained for more than one reason:

(i) First, we had issued notice in the petition, as far back as on 16.08.2017. Despite notice, no counter affidavit has been filed. The assertions made in the petition have gone completely untraversed.

(ii) Second, which is also the nub of the case, the detenu was arrested on 29.05.2017. The impugned order was passed on 21.07.2017. The delay in passing the impugned order remains unexplained, and therefore, the counter affidavit of the State attains criticality.

(iii) Third, a perusal of paragraph No.4 of the impugned order would show that in Crime Nos.1656 of 2017 and 1670 of 2017, the detenu had moved for bail before the Court of Principal Sessions Judge, Chennai, which was granted. The detenu, however, could not come out on bail, in view of the fact that he was unable to offer sureties. Likewise, the detenu had filed bail application in Crime No.1656 of 2017, perhaps once again, before the Principal Sessions Judge, Chennai, which, however, was dismissed. Insofar as the other adverse case is concerned, which is, Crime No.1366 of 2017, even according to the Detaining Authority, no bail application had been moved by the detenu at the point in time when the impugned order was passed. Despite all these reasons, the Detaining Authority appears to have come to the conclusion that there is likelihood of the detenu being enlarged on bail. This conclusion the Detaining Authority appears to have arrived at, on the basis, that the relatives of the detenu are said to be taking steps to file a bail application in Crime No.1656 of 2017. Besides this aspect, the Detaining Authority also adverts to two similar cases, in which bail was granted in 2014 and 2015. To be noted, while the number of the bail applications is given, the dates of the order are not set out by the Detaining Authority. We are of the opinion that the measure used by the Detaining Authority to come to the conclusion that there was real and imminent

possibility of the detenu being enlarged on bail, is erroneous. The circumstance, alluded to paragraph No.4 of the impugned order, to our mind, could not have led to the Detaining Authority to come to such a conclusion.

7. Thus, for the foregoing reasons, as indicated above, the impugned order cannot be sustained. Consequently, the impugned order is set aside.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.432/BCDFGISSSV/2017, dated 21.07.2017, passed by the second respondent is set aside. The detenu, namely, Kandhan, S/o.Selvaraj, male, aged about 26 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 IX)

//True copy//

Sub Assistant Registrar

vsm

To

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

2.The Commissioner of Police
Greater Chennai Police.

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

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

[In duplicate for communication to the detenu]

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

H.C.P.No.1499 of 2017

GN(28/11/2017)



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