

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2017

Coram

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

H.C.P.No.1520 of 2017

Dinesh @ Ottai Dinesh @ Dineshkumar ... Petitioner

Vs.

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

2.State Rep. By
The Commissioner of Police
Greater Chennai,
Vepery,
Chennai - 600 007.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention under Act 14 of 1982 vide Detention order dated 04.07.2017 on the file of the second respondent herein made in proceedings No.395/BCDFGISSSV/2017 and quash the same as illegal and consequently direct the respondents herein to produce the detenu Dinesh @ Ottai Dinesh @ Dineshkumar, Son of Gnanasekar male, aged 30 years before this Court and set him at liberty at once from the detention now confined at Central Prison, Puzhal.

For Petitioner : Mr.A.Vijay Sankar
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 04.07.2017.

2.A perusal of the impugned order would show that there are four adverse cases registered against the detenu. These being : Crime No.551 of 2017; Crime No.897 of 2017; Crime No.913 of 2017; and Crime No.919 of 2017.

3.Insofar as the subject case is concerned, it has been registered as Crime No.953 of 2017. The record shows that the detenu was arrested on 22.05.2017.

4.A perusal of the record also shows that the detenu had moved three (3) bail petitions and that all three (3) bail petitions were dismissed. The Detaining Authority, however, appears to have entertained an apprehension that the detenu could get enlarged on bail, albeit, on two (2) grounds. First, that the relatives of the detenu may move for bail; and second, that in similar cases, bail was granted by the concerned Courts.

4.1.To be noted, insofar as similar cases are concerned, the impugned order does not set out the dates on which the orders passed, though, numbers of the bail petitions have been given.

4.2.Based on these circumstances, the Detaining Authority appears to have reached a conclusion that there is a real and imminent possibility of the detenu being released on bail in the aforementioned cases.

5.We have perused the records and heard both, the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, the detenu was arrested as far back as on 22.05.2017, while the impugned order was passed on 04.07.2017. Notice in the petition was issued on 18.08.2017. To date, no counter affidavit has been filed. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even according to the Detaining Authority all three (3) bail petitions filed by the detenu, at the time when the order was passed, had been dismissed by the concerned Court. To be noted, these bail petitions were moved in the adverse cases and not in the subject case i.e. Crime No.953 of 2017. The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick

applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.

6. Thus, in our view, the impugned order, as indicated above, would have to be quashed. It is directed accordingly.

7 In the result, the Habeas Corpus Petition is allowed and the order of detention in No.395/BCDFGISSSV/2017, dated 04.07.2017, passed by the second respondent is set aside. The detenu, namely, Dinesh @ Ottai Dinesh @ Dineshkumar, S/o.Gnanasekar, male, aged about 30 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/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

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

2.The Commissioner of Police
Greater Chennai,
Vepery,
Chennai - 600 007.

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.1520 of 2017

NR 04/12/2017



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