

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.12.2017

Coram

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

H.C.P.No.1583 of 2017

A.Sowmiya

... Petitioner

Vs.

The State represented by its

1.The Secretary to Government (Home),
Prohibition and Excise Department
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Salem City,
Salem.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention dated 02.08.2017 passed by the 2nd respondent in C.M.P.No.60/Goonda/Salem City/2017 and quash the same and produce the detenu, Ajith Kumar, aged about 25 years, S/o.Palanivel, detained at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Dr.S.Manoharan

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 filed to challenge the detention order dated 02.08.2017.

2. A perusal of the detention order would show that there are two (2) adverse cases registered against the detenu. These being : Crime No.300 of 2016 and Crime No.175 of 2017.

3. Insofar as the subject case is concerned, the same has been registered as Crime No.204 of 2017. In respect of this case, the detenu has been booked under Sections 341, 392 r/w 397 and 506 (ii) of the IPC.

4. We have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. We have also perused the record.

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

(i) First, the record shows that the detenu was arrested on 15.07.2017, whereas, the impugned detention order, as indicated above, was passed on 02.08.2017. Notice in this petition was issued on 28.08.2017. Despite opportunity being given, no counter affidavit has been filed by the State. Accordingly, the delay in passing the impugned order remains unexplained.

(ii) Second, a perusal of paragraph No.5 of the impugned order would show that insofar as Crime No.175 of 2017 is concerned, the bail petition filed by the detenu was dismissed by the concerned Court on 27.07.2017. The only reason that appears to have persuaded the Detaining Authority in reaching the conclusion that there was a real and imminent possibility of the detenu being enlarged on bail, is that, the relatives of the detenu were making efforts to move a bail application. Furthermore, this reason is sought to be supported by the Detaining Authority by applying the "similar case" test. The Detaining Authority, in fact, in this behalf has referred to a 2014 case. The bail order in that case was passed on 03.11.2014.

(ii)(a) According to us, the conclusion arrived at by the Detaining Authority is completely flawed. Clearly, on the date, when the impugned order was passed, bail had been denied to the detenu. The fact that the relatives would move for bail or in a similar case, bail was granted and that too in 2014, according to us, could not have formed the basis for the Detaining Authority to reach a conclusion that there was a real and imminent possibility of the detenu being enlarged on bail.

5. Thus, for the foregoing reasons, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.60/Goonda/Salem City/2017, dated 02.08.2017, passed by the second respondent is set aside. The detenu, namely, Ajithkumar, S/o.Palanivel, male, aged about 25 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(CO)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Salem City,
Salem.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Salem.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

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