

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

Coram

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

H.C.P.No.1617 of 2017

Thiru.Sabapathy

... Petitioner

Vs.

1.State of Tamil Nadu

Rep. By the Secretary to Government,  
Home, Prohibition and Excise Department  
Fort St. George,  
Chennai - 600 009.

2.District Magistrate & District Collector,  
Kancheepuram District,  
Kancheepuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order passed in BCDFGISSSV No.72 of 2017 dated 10.08.2017 on the file of the 2<sup>nd</sup> respondent herein and set aside the same and direct the respondents to produce the body of Thiru Sabapathy, S/o.Jayaraman, the detenu herein now confined in Central Prison, Puzhal, Chennai before the Court and set him at liberty.

ForPetitioner : Mr.D.Gopikrishnan for  
Mr.S.Senthilkumar

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, whereby, challenge is laid to the detention order dated 10.08.2017.

2. A perusal of the detention order would show that, qua the detenu one(1) adverse case, bearing Crime No.414 of 2017, is noted.

3. Insofar as the subject case is concerned, it is registered as Crime No.293 of 2017.

4. The record also shows that the detenu surrendered before the VIII Metropolitan Magistrate, George Town, Chennai, on 30.06.2017. A perusal of paragraph No.5 of the detention order would show that to date, the detenu has not filed a bail petition. The Detaining Authority, however, has come to the conclusion that the detenu could be enlarged on bail on two (2) grounds. First, that the mother, who had made a statement under Section 161 (iii) of Cr.P.C., had said that due to domestic reasons, the family was not able to move a bail petition. Second, that in a similar case bail granted on 22.01.2014.

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

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

(i) First, though the detenu had surrendered on 30.06.2017, the impugned detention order was passed on 10.08.2017. Notice in this petition was issued on 31.08.2017, despite which, no counter affidavit has been filed by the State. Consequently, the delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, the detenu, on the date when the impugned order was passed, had not filed any bail petitions. The reasons given by the Detaining Authority, such as, that the detenu's mother was likely to move for bail, and that, in a similar case pertaining to 2014, bail had been granted, according to us, were not good enough reasons for the Detaining Authority to come to the conclusion that there was real and imminent possibility of the detenu being enlarged on bail. As indicated by us, in several other matters, the "similar case" yardstick applied by the Detaining Authority without examining the parity between cases is a flawed measure, as bail is not granted by the Courts based on the similarity of provisions of law under which accused are booked. The Courts, while granting bail, on the other hand, look to various other factors including the gravity of offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

6. In these circumstances, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.72 of 2017 dated 10.08.2017, passed by the second respondent is set aside. The detenu, namely, Sabapathy, S/o.Jayaraman, male, aged about 28 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

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,  
Home, Prohibition and Excise Department  
Fort St. George,  
Chennai - 600 009.
- 2.District Magistrate & District Collector,  
Kancheepuram District,  
Kancheepuram.
- 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.

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