

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2017

Coram

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

H.C.P.No.1629 of 2017

Padhamavathy

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 9.

2. The District Collector and District Magistrate
Krishnagiri District,
Krishnagiri.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the second respondent herein pertaining to the detention order made in S.C.No.40/2017 dated 12.07.2017 and quash the same and direct the respondents to produce the body of the detenu Dharshan, Son of Raju, aged 21 years, now detained in Borstal School, Pudukottai, before this Court and set the detenu at liberty forthwith.

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

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O R D E R
(Order of the Court was made by RAJIV SHAKDHER, J)

1. This is a petition seeks to assail the detention order dated 12.07.2017.

2. A perusal of the impugned order would show that there are three (3) adverse cases, noted qua the detenu. These are Crime No.0682 of 2016; Crime No.189 of 2017; and Crime No.247 of 2017. The detenu has been detained under Sections 399 and 402 of the

IPC in respect of the first case. In so far as the second and third case are concerned, the detenu has been detained under Section 392 of the IPC.

3. To be noted, the subject case, is registered as : Crime No.159 of 2017. In this case, the detenu has been booked under Section 392 of the IPC.

4. A close examination of the impugned order would show that, even according to the Detaining Authority, the detenu has not moved a bail petition. The only reason articulated by the Detaining Authority to justify the detention, is that, in a similar case (Crl.M.P.No.6004 of 2016), bail was granted vide order dated 17.09.2016.

4.1. The record further shows that the detenu was taken into custody on 26.05.2017.

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

(i) First, even though the detenu was detained, as far back as on 26.05.2017, the detention order was passed only on 12.07.2017. Clearly, there has been much delay in passing the impugned order.

(ii) Second, the detenu has not, concededly, moved bail petitions in any of the cases, referred to in the impugned order.

(iii) Third, the only reason given by the Detaining Authority to justify the passing the impugned order is that, in a similar case, bail was granted. As indicated above, bail in that case was granted on 17.09.2016. In our opinion that by itself cannot be the basis for passing the impugned order. It is our view that given the circumstances, there is no real and imminent possibility of the detenu being enlarged on bail, at this stage.

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

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.40/2017 dated 12.07.2017, passed by the second respondent is set aside. The detenu, namely, Dharshan, S/o.Raju, male, aged about 21 years, is directed to be released forthwith unless his detention is

required in connection with any other 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.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 9.
- 2.The District Collector and District Magistrate
Krishnagiri District,
Krishnagiri.
- 3.The Superintendent,
Borstal School, (By fax)
Pudukottai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

+2 Ccs to Mr.Venkatasamy Baby, Advocate sr 81795.

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H.C.P.No.1629 of 2017

GMR(CO)
SP(20/11/2017)