

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No. 1675 of 2017

Rasila Begum ... Petitioner/wife of the
detenue

-vs-

- 1.Government of Tamilnadu,
rep. By its Principal Secretary,Home,
Prohibition and Excise (XVI) Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
Erode District, Erode. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in Cr.M.P.No.18/Immoral Traffic Offender/2017-C1 dated 19.08.2017 on the file of the 2nd respondent herein and quash the same and direct the Respondents herein to produce the body of the petitioner's husband Shahul Hameed @ Shahith Ali, aged 33 years, son of Abdul Kuthoos, now confined in Central Prison, Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner : M/s.R.Subhadra Devi

For Respondents : Mr.V.M.R.Rajendran
Additional Public Prosecutor

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O R D E R

(Order of the Court was made by RAJIV SHAKDHER,J.)

1.This petition, filed by the wife of the detenu, seeks to assail the detention order dated 19.08.2017.

2. Notice in this petition was issued on 08.04.2017. Despite opportunities, being given to the State, no counter affidavit has been filed to date. Therefore, the assertions made in the petition have remain un-controverted.

3. In the detention order, two (2) adverse cases (Crime No.258 of 2017 and Crime No.310 of 2017) have been adverted to qua the detenu. In both cases, it is alleged that the detenu has committed offences under Section 3 (1) 4 (2) (c) and 5 (1) (a) of Immoral Traffic Prevention Act, 1956 (hereinafter referred to as "ITP Act").

4. Insofar as the subject cases is concerned, the detenu has been, once again, booked for offences under the same provisions of the ITP Act. The subject case has been registered as : Crime No.551 of 2017. It is not in dispute that the detenu in the subject case was arrested on 25.07.2017.

5. Admittedly, the detention order was passed on 19.08.2017. There is a delay in passing the detention order. A perusal of the impugned order shows that even though, bail has been granted to the detenu in the adverse cases as well as in the subject case, the detenu was not able to avail of the benefit and he was unable to furnish sureties. Resultantly, the detenu remained incarcerated. The detaining authority, however, has expressed an apprehension that the detenu, would be released, if, he were to furnish his sureties.

5.1. It is clear that even though bail was granted to the detenu, as far back on 10.08.2017, he was not able to furnish sureties.

6. Therefore, according to us, the apprehension expressed by the detaining authority that the detenu will be enlarged on bail is neither real nor imminent. Besides this, as indicated above, the delay in passing the detention order impregnated with doubts.

7. For the foregoing reasons, we are inclined to quash the impugned order. It is ordered accordingly.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.18/Immoral Traffic Offender/2017-C1 dated 19.08.2017, passed by the second respondent is set aside. The detenu, namely, Shahul Hameed @ Shahith Ali, aged 33 years, son of Abdul Kuthoos, 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mps
To

- 1.The Principal Secretary, Home,
Prohibition and Excise (XVI) Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
Erode District, Erode.
- 3.The Joint Secretary to Govt
Public Law and Order Department
Fort St.George Chennai-9
- 4.The Superintendent
The Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.

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