

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. 1680 of 2017

Abdul Rahim

... Petitioner/Father of the detenue

-vs-

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Department of prohibition and excise (Home),
Fort St. George,
Chennai - 600 009.

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

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order of detention in No.75/BCDFGISSSV/2017 dated 17.08.2017 on the file of the second respondent and set aside the same as illegal and Direct to the Respondents to produce the detenue Abdul Razak @ Abdullah, son of Abdul Rahim, aged about 21 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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

WEB COPY
O R D E R

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

1.This is a petition seeks to challenge the detention order dated 17.08.2017.

2.Notice in this petition was issued on 08.09.2017. 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, one adverse case is noted qua the detenu. This case is numbered as Crime No.389 of 2017. In respect of this case, the detenu has been booked for offences under Sections 294(b), 341, 324, 307 and 506 (ii) IPC.

4. Insofar as the subject case is concerned, it is registered as Crime No.527 of 2017. The detenu was admittedly arrested on 19.07.2017.

5. A perusal of Paragraph 5 of the impugned order shows that upon the detenu's arrest on 19.07.2017, he was remanded to judicial custody until 02.08.2017 and that the remand period was extended periodically up to 30.08.2017. The impugned order further shows that the detenu had moved for bail in Crime No.389 of 2017 and Crime No.527 of 2017, which were dismissed on 01.08.2017.

6. The record also shows that the detenu immediately thereafter moved another set of bail petitions being : CrIOP No.16181 of 2017 and 16182 of 2017. These petitions, as per the impugned order, were pending before the concerned Court, on the date when, the detention order was passed. The detaining authority has expressed an apprehension that the detenu is likely to be released on bail and would commit similar offences. This apprehension, it appears stems from the fact that in similar cases, the accused have been released on bail. The reference in this regard is made qua an another accused, who was released on bail, via, an order passed on 11.06.2015.

7. We have heard the learned counsel for the petitioner and perused the record.

8. According to us, the impugned order needs to be quashed. The reasons for the same is as follows : First, even though the detenu was arrested on 19.07.2017, the detention order was passed nearly a month later, i.e., on 17.08.2017. Second, the bail petitions moved by the detenu were dismissed on 01.08.2017. The fact that the detenu, thereafter, moved for bail on 08.08.2017, cannot lead to the conclusion that the detenu will be released on bail. The probability of his release was, perhaps, dimmed rather than enhanced, given the close proximity between the two events. Lastly, the detaining authority has expressed an apprehension that in a similar case, the accused was released and that, the petitioner, perhaps, would be released. According to us, the apprehension is unreal. The bail order, in that case, was passed on 11.06.2015, which was nearly two years, prior to the date of the detention order.

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

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.75/BCDFGISSSV/2017 dated 17.08.2017, passed by the respondent No.2 is set aside. The detenu, namely, Abdul Razak @ Abdullah, son of Abdul Rahim, 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.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
Department of prohibition and excise (Home),
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanchipuram District,
Kanchipuram.
3. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat,
Chennai-9
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No. 1680 of 2017

NR 07/11/2017