

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017

Coram

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

H.C.P.No.1704 of 2017

Pushpa Mary

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to the Government,,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police
O/o.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order of detention made in Memo No.471/BCDFGISSSV/2017 dated 04.08.2017 on the file of the Commissioner of Police, Greater Chennai, Chennai, the 2nd respondent herein, branding the detenu by name Suji Kumar @ James aged about 39 years, S/o.Rajaiyan, as 'Immoral Traffic Offender' who is now confined in Central Prison, Puzhal, Chennai and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.G.Hariharan
for Ms.J.Anandhavalli

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 assail the detention order dated 04.08.2017.

2. A perusal of the detention order would show that three (3) adverse cases have been noted qua the detenu. These being : Crime No.29 of 2017; Crime No.55 of 2017; and Crime No.79 of 2017. In all these cases, the detenu has been booked under the provisions of Immoral Traffic Act.

3. Insofar as the subject case is concerned, it is registered as : Crime No.88 of 2017. In the said case also the detenu has been booked under the provisions of Immoral Traffic Act.

3.1. Furthermore, the record shows that the detenu was arrested on 27.07.2017. The Detaining Authority, while noting the fact that on the date when the impinged order was passed, bail petitions filed in the three (3) adverse cases and one (1) subject case were pending, arrived at the conclusion that there was a likelihood of the detenu being released based on bail granted to another accused in Crl.M.P.No.968 of 2017.

4. Given this background, 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 records. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, though the detenu was arrested on 27.07.2017, the impugned detention order was passed on 04.08.2017. Notice in this petition was issued on 12.09.2017, despite which, no counter affidavit has been filed by the State. The delay in passing the impugned detention order, thus, remains unexplained.

(ii) Second, even according to the Detaining Authority though the detenu had moved bail petitions in the four (4) cases, referred to above, said bail petitions were, however, pending on the date when the impugned order was passed. The Detaining Authority, however, in our view, erroneously came to the conclusion that the detenu was likely to be released on bail by basing it on the result achieved by another accused in Crl.M.P.No.968 of 2017. According to us, the approach adopted by the Detaining Authority is flawed. On the date when the impugned order was passed, there could have been no apprehension that the detenu could be enlarged on bail, since bail petitions filed were pending adjudication.

5. Thus, for the foregoing reasons, 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 Memo No.471/BCDFGISSSV/2017 dated 04.08.2017, passed by the second respondent is set aside. The detenu, namely, Suji Kumar @ James, S/o.Rajaiyan, male, aged about 39 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.Principal Secretary to the Government,,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police
O/o.The Commissioner of Police,
Greater Chennai,
Chennai.

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.

+1cc to Mr.G.Sumitra, Advocate, S.R.No.89222

H.C.P.No.1704 of 2017

KK(CO)

RRK(14/12/2017)