

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM:

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

H.C.P.No.1731 of 2017

B.Anushree Pradeepa

... Petitioner

-VS-

1.The Secretary to Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
Salem City.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records of the detention made in C.M.P.No.69/Goonda/Salem City/2017 dated 30.08.2017 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu Thiru.Balu @ Balakrishnan, aged 37 years, S/o.Vasudevan, now confined in Central Prison, Salem, in this Court and set him at liberty.

For Petitioner : Mr.E.C.Ramesh
For Respondents : Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1.This is a petition which seeks to challenge the detention order, dated 30.08.2017.

2.A perusal of the impugned detention order, would show, four adverse cases, came to the notice of the detaining authority. These being: Crime No.212 of 2017: Crime No.232 of 2017: Crime No.233 of 2017 and Crime No.255 of 2017. In respect of these cases, detenu has been booked, under various provisions of the I.P.C. This apart, in so far as the subject case is concerned, the same is registered as Crime No.257 of 2017.

2.1.The record further shows, that the detenu, surrendered on 14.07.2017.

2.2.The detaining authority, while noting the fact, that the detenu's bail petition, in Crime No.257 of 2017, was pending, has come to the conclusion, that the detenu may be enlarged on bail on two grounds:

2.2(a).First, it had information, that the relatives of the detenu, were making efforts, to move bail applications, on behalf of the detenu.

2.2(b).Second, in a similar case pertaining to 2014, bail had been

granted by the concerned Court.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

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

(i) First, even though, the detenu had surrendered, as far back as in 14.07.2017, the impugned detention order, was passed only on 30.08.2017. Notice in this petition was issued on 15.09.2017. Despite, several opportunities having been given, to the State, no counter affidavit has been filed. Resultantly, the delay, in passing the impugned detention order, remains unexplained.

(ii) Second, the conclusion arrived at by the detaining authority, that there was a real possibility of the detenu being enlarged on bail, is flawed. The reason for the same, is that, even according to the detaining authority, the bail petition filed by the detenu, in Crime No.257 of 2017, was pending on the date, when the impugned order was passed. Therefore, there was

no possibility of the detenu being enlarged on bail, on the date, when the impugned order was passed. The detaining authority's apprehension, of the detenu being released on bail, based on the other aspects, which is that, in a similar case, bail was granted, that too, in 2014, is according to us, an erroneous reason, to come to such a conclusion.

5. Bails by Court are granted, not because of parity in provisions, but by taking into account, various factors, including circumstances such as, the gravity of the offence, ability of the accused to suborn witnesses and the possibility of the accused fleeing from justice.

6. Thus for the foregoing reasons, 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 C.M.P.No.69/Goonda/Salem City/2017, dated 30.08.2017, passed by the second respondent is set aside. The detenu, namely, Balu, alias, Balakrishnan, son of Vasudevan, aged about 37 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.

[R.S.A.,J.] [N.S.K.,J.]

22.12.2017

Speaking Order/ Non Speaking Order

Index : Yes / No

Internet : Yes / No

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Note to office:

- (i) Issue copy by today itself.
- (ii) This order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To

1. The Secretary to Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2. The Commissioner of Police,
Salem City.

3. The Superintendent,
Central Prison, Salem.

4. The Additional Public Prosecutor,
Madras High Court,
Madras.

**RAJIV SHAKDHER, J.
And
N.SATHISH KUMAR, J.**

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