

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2017

Coram

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

H.C.P.No.1744 of 2017

Babubai

... Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector &
District Magistrate,
Vellore District,
Vellore - 9.

.. 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 connection with the order of detention passed by the second respondent dated 16.08.2017 in C3.D.O.No.85/2017 against the petitioner son Ramu, male aged 25 years, S/o.Mohan @ Sabapathy, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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, whereby challenge is laid to the detention order dated 16.08.2017.

2. A perusal of detention order would show that two (2) adverse cases are noted qua the detenu. These being : Crime No.185 of 2017; and Crime No.252 2017. In respect of these cases, the detenu has been booked under various sections of the I.P.C.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.167 of 2017. Qua this case, the detenu has been booked under Sections 302, 120B and 216 of the I.P.C.

4. The record shows that the detenu surrendered on 29.05.2017. A perusal of the impugned order would also show that on the date, when the said order was passed, the detenu had moved for bail in Crime No.167 of 2017, which was, at that point in time, pending adjudication. The Detaining Authority, however, entertained an apprehension that the detenu would be released on bail, based on bail granted to another accused in Crime No.15 of 2016 on 06.04.2016.

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

(i) First, even though the detenu had surrendered on 29.05.2017, the impugned detention order was passed, after nearly three (3) months, on 16.08.2017. Though, notice in this petition was issued on 18.09.2017, the State, has chosen not to file a counter affidavit in the matter. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, that even according to the Detaining Authority, on the date, when the impugned order was passed, the bail application moved by the detenu in Crime No.167 of 2017 was pending. The Detaining Authority, however, has come to a conclusion that there was a real possibility of the detenu being enlarged on bail, based on the fact that in a similar case bail was granted, albeit, on 06.04.2016. According to us, the conclusion reached is flawed, as there was, in our opinion, no real and imminent possibility, when the impugned order was passed, of the detenu being released on bail. Bails by Court are not granted because, there is parity in the provisions, but, by taking into account various factors, which includes the gravity of offences, the 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 No.C3.D.O.No.84/2017 dated 16.08.2017, passed by the second respondent is set aside. The detenu, namely, Ramu, S/o.Mohan @ Sabapathy, male, aged about 25 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(CS V)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector &
District Magistrate,
Vellore District,
Vellore - 9.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Vellore.
-by fax
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

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