

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.1753 of 2017

R.Indirani

... Petitioner

-VS-

1.The State of Tamilnadu
 Rep. by its Secretary to Government,
 Home, Prohibition and Excise Department,
 St.George Fort, Chennai – 600 009.

2.The Commissioner of Police,
 Greater Chennai,
 Vepery, Chennai – 7.

3.The Inspector of Police,
 K-3, Aminjikarai Police Station,
 Chennai.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records leading to passing of the order of detention under Act 14/1982 vide detention order No.516/17 dated 29.08.2017 on the file of the 2nd respondent, against petitioner's husband by name Rajendran, aged 55, son of Samaiyan, quash the same and consequently direct the respondents herein to produce the said detenu before this Court and thereafter set him at liberty.

For Petitioner : Mr.D.Sivaramkumar
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, by which, challenge is made to the detention order, dated 26.08.2017.

2.A perusal of the detention order, would show, that four adverse cases, have been noticed qua the detenu. These being: Crime No.426 of 2017; Crime No.761 of 2017; Crime No.968 of 2017; and Crime No.1092 of 2017. In respect of these four cases, the detenu, has been booked, under Section 379 of the I.P.C. This apart, in so far as the subject case is concerned, the same has been registered as Crime No.1180 of 2017. In respect of this case, the detenu has been booked under Sections 341, 294(b), 323, 336, 397 and 506(ii) I.P.C.

2.1.The record further shows, that the detenu, was arrested on 18.07.2017.

2.2.Furthermore, a perusal of the impugned order would show that no bail petition was moved by the detenu in respect of Crime No.1092 of 2017 and the subject case, i.e., Crime No.1180 of 2017.

2.3.The detaining authority, however, came to the conclusion, that the detenu may be released on bail, based on the result in a bail filed in respect of other accused, in Crime No.212 of 2016 and Crime No.656 of 2016.

2.4.Though, the detaining authority, has referred to Crime numbers, and, in one case, the bail application number is provided the dates when the orders were passed is not adverted to, by the detaining authority.

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

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

(i)First, though, the detenu was arrested on 18.07.2017, the detention order, was passed after more than one month, i.e., 26.08.2017.

Notice in this petition was issued on 19.09.2017. Despite, opportunities

having been given, no counter affidavit has been filed, by the State. Resultantly, the delay, in passing the impugned detention order, remains unexplained.

(ii) Second, even according to the detaining authority, bail applications were not moved by the detenu, in Crime No.1092 of 2017 and Crime No.1180 of 2017. Despite this position obtaining, the detaining authority, to our minds, erroneously came to the conclusion, that the detenu would be enlarged on bail. The reasons, furnished by the detaining authority is, that in similar cases bail was granted in 2016. According to us, the yardstick employed by the detaining authority, was erroneous. This is specially so, as bail petitions were not moved in Crime No.1092 of 2017 and Crime No.1180 of 2017.

5.Thus for the foregoing reasons, as indicated above, 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 No.516/BCDFGISSSV/2017, dated 26.08.2017, passed by the second respondent is set aside. The detenu, namely, Rajendran, son of Samaiyan, aged about 55 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,
Home, Prohibition and Excise Department,
St. George Fort, Chennai – 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 7.
3. The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai.
4. The Additional Public Prosecutor,
Madras High Court,
Madras.

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

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H.C.P.No.1753 of 2017

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