

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

Coram

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

H.C.P.No.1754 of 2017

R.Raja

... Petitioner

Vs.

1.The Commissioner of Police
Commissioner Office-Grater Chennai
Vepery, Chennai-7.

2.The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department, (Home)
Secretariat, Fort St. George,
Chennai - 600 009.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records of the order passed by the 1st respondent dated 29.07.2017 in Memo No.466/BCDFGISSSV/2017, and set aside the same and produce the detenu, Prapabhakaran, Son of Rangasamy, aged about 35 years, as a Goonda under Tamil Nadu Act 14 of 1982 and now confined at Central Prison-II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.N.Iyyakannu

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

सत्यमेव जयते
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 29.07.2017.

2. The subject case is the only case registered against the detenu. This case is numbered as : Crime No.1942 of 2017. The detenu has been booked under Sections 302 and 380 of the IPC.

3. The record shows that the detenu was arrested on 15.06.2017. The police, during the course of investigation, have recorded a "voluntary confession statement" of the detenu

and also have recovered some incriminating articles. According to the police, the detenu was a paramour of the wife of the deceased.

4. A perusal of the impugned order would show that, on the date when the detention order was passed, no bail application had been moved by the detenu. The Detaining Authority, based on the rationale that in a similar case pertaining to 2014 bail was granted, has come to the conclusion that the detenu was likely to be enlarged on bail as well.

5. We have heard the learned counsel for the petitioner as well as the 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 15.06.2017, the impugned detention order was passed, after much delay i.e., on 29.07.2017. While State has filed a counter affidavit in the matter, that too, only today, we find that there is no explanation for the delay in passing the impugned detention order. Thus, the delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, on the date when the impugned order was passed, no bail application had been filed by the detenu. The Detaining Authority, however, came to the conclusion that there was a possibility of the detenu being released on bail, by applying the yardstick that in a similar case, which pertained to 2014, bail had been granted. Pertinently, the date of the order has not been set forth in the impugned order by the Detaining Authority.

(ii)(a) Furthermore, as observed by us in several cases, the "similar case" yardstick employed by the Detaining Authority is flawed. The Courts, while granting bail, look to various factors, which includes the gravity of the offence; the ability of the detenu to suborn witnesses ; and the possibility of the detenu fleeing from justice.

6. Thus, for the aforesaid 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 Memo No.466/BCDFGISSSV/2017 dated 29.07.2017, passed by the first respondent is set aside. The detenu, namely, Prabhakaran, S/o.Rangasamy, 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(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner of Police
Commissioner Office-Grater Chennai
Vepery, Chennai-7.
 - 2.The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department, (Home)
Secretariat, Fort St. George,
Chennai - 600 009.
 - 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.
- +1 cc to M/s.N.Iyyakannu Advocate sr 88572

H.C.P.No.1754 of 2017

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