

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2017

Coram

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

H.C.P.No.1772 of 2017

Thirunavukarasu ... Petitioner/husband of
the detenu
Vs.

- 1.State of Tamil Nadu,
rep. By its Secretary to Govt.,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai - 600 007 ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the detention order Memo No.537/BCDFGISSSV/2017, dated 05.09.2017 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's wife DHANAM @ DHANALAKSHMI, W/o Thirunavukarasu, aged about 38 years the detenu, now confined in Special Prison for Women, Puzhal, Chennai before this Court and set the petitioner's wife DHANAM @ DHANALAKSHMI, W/o Thirunavukarasu, aged about 38 years the detenu herein at liberty.

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

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O R D E R

(Order of the Court was made by RAJIV SHAKDHER,J .,)

The petitioner is the husband of the detenu , namely,Dhanam @ Dhanalakshmi, W/o Thirunavukarasu, female aged about 38 years. The detenu has been detained by the second respondent by his order in Memo No.537/BCDFGISSSV/2017, dated 05.09.2017 holding her to be a "BOOTLEEGER", as contemplated under 2(f) of Tamil

Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the record produced by the Detaining Authority.

3. In the impugned order, three adverse cases have been noted against the detainee. These being : Cr.Nos.559/2016; 1273/2016; and 1287/2016.

4. In the subject case, which is registered as Cr.No.641/2017, the detainee has been booked under Sections 4(1) (a) r/w 4(1-A) TNP Act and 341, 294(b), 353, 336, 427 and 506 (ii) of the IPC.

5. A perusal of the impugned order would show that the detainee was arrested on 28.07.2017. Further more, paragraph four of the impugned order shows that the detainee had moved two bail applications, being CrI.M.P.No.11453/2017 and 13158/2017 before the Principal Sessions Court, Chennai. Insofar as the first application is concerned, it was dismissed on 02.08.2017, while the second bail application was allowed vide order dated 04.09.2017. The detaining authority, however, notes that even though bail was granted to the detainee on 04.09.2017, she was not able to avail of the benefit of the order passed in her favour, as she was not able to offer sufficient sureties. Concededly, the detainee was in prison on the date when the impugned order was passed.

6. It is in these circumstances, that the detaining authority has come to the conclusion that there is likelihood of the detainee coming out on bail, once, she is able to garner sufficient sureties.

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

(i) The detainee was arrested on 28.07.2017, whereas the impugned order was passed on 05.09.2017. Clearly, there has been delay in passing the impugned order.

(ii) Admittedly, the detainee had moved twice for grant of bail. In the first instance, bail application was dismissed on 02.08.2017, while in the second instance, bail was granted via Order dated 04.09.2017. However, the detainee was not able to avail the benefit of the order dated 04.09.2017 as she could not garner sufficient sureties. Thus, clearly, even according to the detaining authority, the detainee does not have sufficient wherewithal. Therefore, the conclusion reached by the detaining authority that there was real and imminent possibility of the detainee being enlarged on bail, in our opinion, is flawed.

8. Furthermore, we may note that though notice in this petition was issued on 21.09.2017, to date, the State has not filed a counter affidavit in the matter.

8.1. Resultantly, the assertion made in the captioned petition remain uncontroverted.

9. Thus, for the foregoing reasons, the detention order is liable to be set aside. It is ordered accordingly.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.537/BCDFGISSSV/2017, dated 05.09.2017 passed by the second respondent is set aside. The detenu, namely, Tmt. Dhanam @ Dhanalakshmi, W/o Thirunavukarasu, female aged about 38 years, is directed to be released forthwith unless her custody is required in 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

To

1. The Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai - 600 007
3. The Superintendent of Central Prison,
(Women Prison)Puzhal
Chennai

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

5.The Joint secretary to Govt
Public law and order Department
fort St.George Chennai-09

HCP No.1772 of 2017

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