

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2017

Coram

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

H.C.P.No.1776 of 2017

Roshni

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009

2. The Commissioner of Police,
Greater Chennai,
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 in connection with the order of detention passed by the second respondent dated 30.08.2017 in BCDFGISSSV No.528/2017 against the petitioner's husband, the detenu herein, now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Santheep, S/o Jarnal, aged about 29 years before this Court and set him at liberty.

For Petitioner : Mr.A. Nirmal Kumar

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

ORDER

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

1. The petitioner is the wife of the detenu , namely, Santheep, Male, aged 29 years, S/o Jarnal. The detenu has been detained by the second respondent by his order in Memo No. BCDFGISSSV No.528/2017 dated 30.08.2017 holding him to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. A perusal of the impugned order shows that there are two adverse cases noted qua the detenu ; these being : Cr.Nos.1193/2017 and 920/2017. In both the cases, the detenu

has been booked under Section 379 of the IPC.

3. In so far as the subject case is concerned, it is registered as : Cr.No.923/2017. In this case, the detenu has been booked under Sections 294(b), 341, 323, 336, 392, 397 and 506(ii) of the IPC.

4. A perusal of the impugned order would show that the detenu was arrested on 05.08.2017. Furthermore, paragraph four (4) of the impugned order shows that even though the detenu had moved for bail and was granted bail on 23.08.2017 in CrI.M.P.No.11969/2017, he was not able to avail of the benefit of the order passed in his favour, as he was not in a position to offer sufficient sureties.

5. Furthermore, a perusal of the impugned order also shows that the detenu has not moved for bail in the adverse cases, which are registered as Cr.Nos.1193/2017 and 920/2017. The detaining authority, however, seems to have entertained an apprehension that the detenu would be enlarged on bail, since his relatives are likely to move bail applications in adverse case Crime No.1193/2017 and 920/2017.

6. In addition thereto, the detaining authority also refers to a similar case, i.e., Cr.No.1677/2012, in which, bail was granted. To be noted, there is no reference to the date as to when, the order granting bail was passed.

7. Given this background, we have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and also we perused the record.

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

(i) First, the detenu was arrested on 05.08.2017, whereas, the impugned order was passed on 30.08.2017. Clearly, there has been delay in passing the impugned order. Notice, in this petition, was issued on 21.09.2017. No counter affidavit has been filed by the State in the matter. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, Even according to the detaining authority, though the detenu was granted bail in Cr.No.923/2017, he was not able to avail of the benefit of the order, as he was not able to offer sufficient sureties. Furthermore, concededly, in the adverse cases (i.e., Cr.Nos.1193/2017 and 920/2017), the detenu had not moved for bail. Given these facts, it appears that the detaining authority seems to have been swayed by the fact that in a similar case bail was granted, albeit, in the year 2012.

8.1. According to us, these facts could not have led the detaining authority to come to a conclusion, which it did, that

there was a real and imminent possibility of the detenu being enlarged on bail.

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. BCDFGISSSV No.528/2017 dated 30.08.2017 passed by the second respondent is set aside. The detenu, namely, Santheep, Male, aged 29 years, S/o Jarnal is directed to be released forthwith unless his detention 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007
3. The Superintendent of Central Prison,
Puzhal, Chennai
4. The Joint Secretary to Government
Public(Law and order)
Fort. st. George
Chennai 9
5. The Public Prosecutor, Madras High Court,
Chennai.

HCP No.1776 of 2017

NRJK(CO)
SP(23/11/2017)