

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2017

Coram

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

H.C.P.No.1799 of 2017

Madhamal ... Petitioner/Mother of the detenue

Vs.

1.State of Tamil Nadu

Rep. By the Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.

2.The District Magistrate &
District Collector,
Namakkal District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the petitioner's son by Sasikumar, S/o.Periyasamy, aged 19 years before this Honourable court now confined in central prison, Salem, set him at liberty and to call for the records pertaining to the order of detention passed in C.M.P.No.09/Goonda/2017/M1 dated 18.08.2017 passed by the 2nd respondent and set aside the same.

For Petitioner : Mr.T.Muruganantham

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

WEB COPY
O R D E R

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

1. This is a petition which seeks to assail the detention order dated 18.08.2017.

2. Notice in this petition was issued on 22.09.2017. Despite issuance of notice, the State has not been filed a counter affidavit to date.

3. A perusal of the detention order would show that only one case is registered against the detenu. The case number is : Crime No.423 of 2017.

4. A reading of the detention order would show that a dead body of, one, Mr.Ramachandran was found on the railway track on 18.06.2017. On making inquiries the detenu and the other co-accused based on a voluntary confessional statement made by them, had the aforementioned case registered against themselves.

5. Admittedly, the detenu has not moved for bail. The only ground, based on which, the detaining authority has come to the conclusion that there is a likelihood of the detenu being enlarged on bail is that, an order was passed, purportedly, in a similar case, being Crime No.390 of 2015. Bail in that case was granted on 06.11.2015. Apart from, commonality of some provisions there is no articulated similarity set out in the impugned order.

6. The record shows that the detenu was arrested on 20.06.2017. Furthermore, the record also shows that on the date of arrest, the detenu was little over 18 years of age.

7. We have heard the learned counsel for the petitioner and perused the record. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 20.06.2017, the impugned order was passed only on 18.08.2017. There has been unexplained delay. As indicated above, no counter affidavit has been filed by the State.

(ii) Second, concededly, the detenu has not moved for bail in Crime No.423 of 2017. The only reason, that the Detaining Authority furnishes for entertaining an apprehension that the detenu may get enlarged on bail, is that in a similar case, bail was granted. As noted above bail in this case was granted on 06.11.2015. According to us, this fact, by itself, cannot be the reason for entertaining an apprehension that there is a real and imminent possibility of the detenu being enlarged on bail.

8. Thus, for the foregoing reasons, we are of the view, as indicated above, that the impugned order cannot be sustained. Accordingly, the impugned order is quashed.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.09/Goonda/2017/M1 dated 18.08.2017, passed by the second respondent is set aside. The detenu, namely, Sasikumar, S/o.Periyasamy, male, aged about 22 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.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

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

H.C.P.No.1799 of 2017

NR 23/11/2017

सत्यमेव जयते

WEB COPY