

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.1813 of 2017

Lilly ... Petitioner/Wife of the detenu

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai - 9.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention made in Memo No.555/BCDFGISSV/2017 dated 11.09.2017 passed by the Commissioner of Police, Greater Chennai, Vepery, Chennai -7 the second respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Thiru.David, Son of Selvaraj, aged 40 years now confined in Central Prison, Puzhal II, Chennai at liberty.

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

O R D E R

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

1. This is a petition seeks to assail the detention order dated 11.09.2017.

2. A perusal of the detention order would show that there is one adverse case noted qua the detenu. This adverse case is

numbered as : Crime No.1219 of 2017. As regards this case, the detenu has been booked under Section 328 of the IPC.

3. Insofar as the subject case is concerned, it is registered as : Crime No.1221 of 2017. In this case, the detenu has been booked under Section 8(c) r/w 20(b) of the NDPS Act.

4. The record shows that the detenu was arrested on 13.08.2017.

5. 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 13.08.2017, the impugned order has been passed, after much delay, that is, on 11.09.2017. Despite, notice having been issued in the petition as far back as on 27.09.2017, no counter affidavit has been filed on behalf of the State. The delay, thus, remains unexplained.

(ii) Second, a perusal of paragraph No.4, of the impugned order would show that the detenu moved twice for bail. Once, in Crime No.1221 of 2017, which was dismissed on 28.08.2017 and, second the time, in Crime No.1219 of 2017, which met with the same fate, on 05.09.2017. The Detaining Authority, however, has entertained an apprehension that the detenu may be enlarged on bail, on account of the reason that in a similar case, bail was granted by the learned Special Judge, NDPS Court, Chennai in CrI.M.P.No.1419 of 2014. The Detaining Authority has not adverted to the date of the order in the said similar case. 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.

6. Thus, for the foregoing reasons, we are of the view that the impugned order cannot be sustained. It is ordered accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.555/BCDFGISSV/2017 dated 11.09.2017, passed by the second respondent is set aside. The detenu, namely, David, S/o.Selvaraj, male, aged about 40 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

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai - 9.
- 2.The Commissioner of Police
Greater Chennai
Vepery, Chennai - 7.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison, Puzhal II,
Chennai.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

सत्यमेव जयते

H.C.P.No.1813 of 2017

NR 23/11/2017

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