

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

Coram

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

H.C.P.No.1814 of 2017

V.Lavanya

... Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Salem City.

... 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 detention made in C.M.P.No.70/Goonda/Salem City/2017 dated 30.08.2017 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu Thiru.Viji @ Vijay, aged 27 years, S/o.Natarajan, now confined in Central Prison, Salem this Court and set him at liberty.

For Petitioner : Mr.E.C.Ramesh
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

ORDER

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

1. This is a petition, which seeks to challenge the detention order dated 30.08.2017.

2. A perusal of the detention order would show that there are three (3) adverse cases have been noted against the detenu. These being : Crime No.212 of 2017; Crime No.232 of 2017; and Crime No.233 of 2017.

3. Insofar as the subject case is concerned, it is registered as Crime No.257 of 2017. In respect of this case, the detenu has been booked under Sections 392 r/w 397 and 506 (ii) of the IPC.

4. The record shows that the detenu was already in judicial custody in Crime No.233 of 2017 and was formally arrested on 31.07.2017.

5. We have perused the records and also heard the learned counsel for the petitioner and Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, though the formal arrest of the detenu was made on 31.07.2017, the detention order was passed only on 30.08.2017. Despite the fact that, notice in this petition was issued on 27.09.2017, no counter affidavit has been filed by the State to date. Thus, the delay in passing the impugned detention order remains unexplained.

(ii) Second, the Detaining Authority, in the impugned order categorically notes that in Crime No.233 of 2017 and Crime No.257 of 2017, bail petitions filed by the detenu, on the date when the impugned order was passed, were pending consideration before the concerned Court. The only reason, based on which, the Detaining Authority appears to have come to the conclusion that there was likelihood of the detenu being enlarged on bail is that in a similar case bail was granted on 03.11.2014. According to us, this could not have been the basis for the Detaining Authority to come to the conclusion that there was likelihood of the detenu being enlarged on bail, when bail petitions filed by him were, concededly, pending consideration, at the point in time when the detention order was passed. The "similar case" yardstick employed by the Detaining Authority is flawed. The Courts, while granting bail, do not merely look to the provisions under which accused are booked but also look into other factors such as the gravity of offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

6. Thus, for the foregoing 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 C.M.P.No.70/Goonda/Salem City/2017 dated 30.08.2017, passed by the second respondent is set aside. The detenu, namely, Viji @ Vijay, S/o.Natarajan, male, aged

about 27 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 (CS-V)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to the Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Salem City.
- 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.1814 of 2017

TR(12/12/2017)

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