

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2017

Coram

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

H.C.P.No.1822 of 2017

Thameem

... Petitioner

Vs.

1. The State of Tamilnadu
Rep.by its Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2. The Commissioner of Police,
Chennai Police,
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 leading to the detention of petitioner's brother yusuf son of Jaffar Male aged 46 years, has been detained under Act 14/82 as a "goonda" vide detention order dated 16.09.2017 on the file of the 2nd respondent herein, made in BCDFGISSSV No.565/2017 and quash the same and consequently direct the respondents herein to produce the body and person of the said detainee before this Court and thereafter set him at liberty from the Central prison, Puzhal, Channai.

For Petitioner : Mr.M. Rajavelu

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

सत्यमेव जयते

O R D E R

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

1. This is a petition which seeks to challenge the detention order dated 16.09.2017. The subject case, evidently, is the only case registered against the detainee. This case is numbered as Cr.No.690 of 2017.

2. The detainee has been booked insofar as this case is concerned, under Sections 363, 147, 148, 364, 365, 302 r/w 120 (b) and 201 of the I.P.C. The detainee has been in custody since 24.06.2017.

3. A perusal of the impugned order would show that though the detainee moved for bail before the Principal Sessions Court, Chennai, twice, on both occasions the bail petitions were dismissed. Evidently, the dismissal orders were passed on 14.07.2017 and 17.08.2017.

3.1. The impugned order also adverts to the fact that the detainee had moved bail petition (CrI.O.P.No.18559/2017) before this Court, which was pending on the date of impugned order (16.09.2017) was passed.

4. Learned counsel for the petitioner says that there has been a total non application of mind. As on that date, the bail petition stood already dismissed. Furthermore, the learned counsel for the petitioner says that illegible copies of documents have been furnished to the detainee. For this, the learned counsel for the petitioner has drawn our attention to the page Nos.597 and 598 of the paper book.

5. We have perused and heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. According to us, the impugned order deserves to be quashed for the following reasons:

(i) There has been a delay in passing the detention order. The detention order was passed on 16.09.2017, whereas, the detainee was taken into custody on 24.06.2017.

(ii) The reasoning articulated by the detaining authority in the impugned order that the detainee was likely to be enlarged on bail is not based on cogent material. Concededly, the two bail petitions filed by the detainee before the Principal Sessions court on 14.07.2017 and 17.08.2017 were dismissed. Insofar as the bail petition which was moved in this Court, the same was also dismissed on 12.09.2017 (CrI.O.P.No.18559/2017). Strangely, the detaining authority in the impugned order notes that this bail petition was pending on the date when the impugned order was passed. Thus, the conclusion reached by the detaining authority that there was real and imminent possibility of the detainee being enlarged on bail, in our view, is flawed.

6. This apart, the petitioner's contention that illegible copies of some documents (Pages 597 and 598) were supplied is also correct.

6.1. We may also note, notice in this petition was issued on 04.10.2017, despite which, no counter affidavit has been filed. Thus, assertions made in the petition have remain uncontroverted.

7. For the foregoing reasons, we are inclined to quash the impugned order. It is directed accordingly.

8. In the result, the Habeas Corpus Petition is allowed. The Order of detention in No.565/BCDFGISSSV/2017 dated 16.09.2017, passed by the second respondent is set aside. The detainee, namely, Thiru. Yusuf, male, aged 46 S/o Jaffar, is directed to be released forthwith unless his custody is required in connection with another case.

9. Consequently, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ggs/pam

To

1. The Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
2. The Commissioner of Police,
Chennai Police,
Vepery, Chennai-7.
3. The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
4. The Superintendent,
Central Prison,
Puzhal, Chennai-600066
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1822 of 2017

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