

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

Coram

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

H.C.P.No.1825 of 2017

Jamuna

... Petitioner

Vs.

1.The Secretary to the Government,  
Home Prohibition & Excise Department,  
Secretariat,  
Chennai - 600 009.

2.The Commissioner of Police  
Grater Chennai City  
Vepery.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records in connection with the order of detention passed by the second respondent dated 14.09.2017 in No.560/BCDFGISSSV/2017 against the petitioner son Venu @ Venugopal, Male aged 29 years, S/o.Sarathy, who is confined at Central Prison, Puzhal, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Ravindran  
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, directed against the detention order dated 14.09.2017.

2. A perusal of the same brings to fore the fact that two (2) adverse cases have been registered against the detenu. These being : Crime No.1390 of 2017 and Crime No.1428 of 2017.

2.1. In respect of the first case, the detenu has been booked under Sections 454 and 380 of the I.P.C. In respect of

the second case, the detenu has been booked under Sections 392 and 397 of the I.P.C.

3. Insofar as the subject case is concerned, which is registered as Crime No.1435 of 2017, the detenu has been booked under Sections 341, 294(b), 323, 336, 427, 392 r/w 397 and 506 (ii) of the I.P.C.

4. The record shows that the detenu was arrested on 29.07.2017. The record further shows that the detenu had file a bail application in Crime No.1435 of 2017, which was allowed by the concerned Court. The detenu, however, could not be enlarged on bail, as he was unable to offer sureties. In addition thereto, the record also shows that the detenu had not moved any bail application in Crime No.1390 of 2017 and Crime No.1428 of 2017. The Detaining Authority, however, has come to the conclusion that the detenu is likely to be enlarged on bail, based on the result in a similar case pertaining to 2015, in which bail was granted in 2016. Pertinently, the date of the order is not mentioned in the impugned detention order.

5. Given this background arguments have been advanced by the counsel for the petitioner as well as the learned Additional Public Prosecutor. We have heard the arguments of both sides and also 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 29.07.2017, the impugned detention order was passed only on 14.09.2017. Notice in this petition was issued on 05.10.2017. Despite two (2) opportunities given, thereafter, no counter affidavit has been filed in the matter. The delay in passing the impugned detention order, therefore remains unexplained.

(ii) Second, that even though bail was granted to the detenu in Crime No.1435 of 2017, he remained in custody, as he was unable to offer sureties. Insofar as two (2) adverse cases are concerned i.e., Crime No.1390 of 2017 and Crime No.1428 of 2017, even according to the Detaining Authority, no bail applications had been moved by the detenu. The Detaining Authority, however, entertained an apprehension that the detenu may be enlarged on bail only on the basis that in a similar case bail was granted. According to us, in the given facts, this conclusion is flawed.

6. Therefore, 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 No.560/BCDFGISSSV/2017 dated 14.09.2017, passed by the second respondent is set aside. The detenu, namely, Venu @ Venugopal, S/o.Sarathy, male, aged about

29 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-)

//True Copy//

Sub Assistant Registrar

vsm

To

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

WEB COPY

H.C.P.No.1825 of 2017

SK(CO)  
TR(13/12/2017)