

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1831 of 2017

Tmt.Nagammal

... Petitioner

-vs-

1.State of Tamil Nadu, rep. by,
Secretary to Government
Home, Prohibition and Excise
Department, Fort St.George,
Chennai - 600 009.

2.District Magistrate & District Collector,
Thiruvallur District,
Thiruvallur.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order passed in B.C.D.F.G.I.S.S.V.No.31/2017 dated 16.9.2017 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the body of detenu, i.e., ISSAC @ DEVAN son of Mani, the detenu herein now confined in Central Prison-II, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Balasing Ramanujam

For Respondents: Mr.V.M.R.Rajentran
Additional 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 16.09.2017. As against the detenu, one adverse case is noticed, in the detention order.

1.1.The said adverse case is registered as Crime No.886 of 2016. In so far as this case is concerned, the detenu has been booked, under Sections 147, 148, 341, 302, 506(ii), 109, 120(b) of the IPC.

2. In so far as the subject case is concerned, same is registered as Crime No.625 of 2017. In respect of this case, the detenu has been booked, under Sections 294(b), 341, 307, 392 r/w 397, 506(ii) of the IPC.

2.1. The record shows, that the detenu was arrested on 21.07.2017.

3. The learned counsel for the petitioner says, that the detention order has been passed, after much delay, and that illegible copies of documents, were also supplied to the detenu. For this purpose, the learned counsel relies upon pages 138 and 142 of the paper book, supplied to the detenu.

3.1. Furthermore, the learned counsel says, that a perusal of paragraph 5 of the impugned order book, would show that even though bail petitions were pending, the detaining Authority, came to a conclusion, that the detenu was likely to be enlarged on bail.

4. On the other hand, the learned Additional Public Prosecutor relies upon the impugned order and the record, to resist the petition.

5. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and also perused the records.

6. According to us, the impugned order, cannot be sustained, for the following reasons:

(i) First, the detenu was arrested on 21.07.2017, whereas, the impugned order was passed on 16.09.2017. There has been a considerable delay, in passing the impugned order, which remains un-explained.

(i) (a) Notice in this petition, was issued on 06.10.2017. Despite, several opportunities, counter affidavit has not been filed by the State. Resultantly, the averments made in the petition, have remained un-traversed.

(ii) Second, a perusal of the impugned order, would show that, the detenu filed bail petition in Crime No.886 of 2016; which, on the date, when the impugned order was passed, was pending.

(ii) (a) Likewise, in Crime No.625 of 2017, the detenu had moved for bail, which was, as in the adverse case, pending, on the date when the impugned order was passed.

(ii) (b) The detaining Authority, however, based on the fact, that in a similar case, which related to 2014, bail had been granted, came to the conclusion, that there was real and imminent possibility of the detenu, being enlarged on bail.

(ii) (c) According to us, this conclusion is flawed. Bail petitions filed by the detenu, were, concededly, pending. The similar cases, to which, reference has been made by the detaining Authority pertained to 2014.

7. Therefore, for the foregoing reasons, as indicated above, we are inclined, to quash the impugned order.

7.1. It is directed accordingly.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.31/2017, dated 16.09.2017, passed by the second respondent is set aside. The detenu, namely, Issac @ Devan son of Mani, aged about 28 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 II)

//True Copy//

Sub Assistant Registrar

pri/ pam

To:

1. The Secretary to Government
Home, Prohibition and Excise
Department, Fort St. George,
Chennai - 600 009.
2. The District Magistrate & District Collector,
Thiruvallur District,
Thiruvallur.
3. The Superintendent,
Central Prison-II, Puzhal, Chennai.
4. The Additional Public Prosecutor,
Madras High Court,
Madras. (In duplicate for communication to detenu)
5. The Joint Secretary to Government,
public Law and Order, Fort. ST. George,
Chennai-9.

+2ccs to Mr.A.Balasingh Ramanujam, Advocate SR.No.84896

H.C.P.No.1831 of 2017

GN(29/11/2017)