

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1837 of 2017

Rubavathi

... Petitioner

-VS-

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

2. The District Collector and District Magistrate
Krishnagiri District, Krishnagiri

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of Detention passed by the second respondent dated 15.09.2017 in S.C.No.60 of 2017 against the petitioner husband Sankar, Male, aged 34 years S/o. Parameswaran, who is confined at Central Prison, Salem and

set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
For Respondents : Mr. V.M.R.Rajendran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by RAJIV SHAKDHER , J.]

1. This is a petition which seeks to lay a challenge to the detention order dated 15.09.2017.

2. A perusal of the record would show that there is one adverse case noted qua the detenu, i.e., Crime No.386 of 2017.

2.1. In this case, the detenu has been booked under Sections 353 and 506(ii) of the IPC.

3. Insofar as the subject case is concerned, which is registered as Crime No.292 of 2017, the detenu has been booked under Sections 353, 307, 379 of the IPC read with Section 21 (i)

and (iv) of Mines and Minerals (Development and Regulation) Act 1957.

4. Furthermore, a perusal of the record shows that, concededly, the bail application moved by the detenu in Crime No.292 of 2017 was dismissed on 11.09.2017.

4.1. This apart, the impugned order also adverts to the fact that the detenu had not moved any bail application in the adverse case, i.e. Crime No. 386 of 2017, till the date when the impugned order was passed.

4.2. The detaining authority has come to the conclusion that the detenu may be enlarged on bail, on account of the bail having been granted to two accused in similar cases.

4.3. In this behalf, the detaining authority has referred to an order dated 27.07.2017 passed in CrI.MP.No. 1117 of 2017 and an order dated 31.07.2017 passed in CrI.MP.No.2889 of 2017.

5. As noted above, clearly, there has been a non-application of mind insofar as the detenu case is concerned.

5.1. The detenu's bail application in Crime No.292 of 2017 was dismissed and that, in the adverse case No.386 of 2017, no bail application had been filed by the detenu.

6. According to us, merely because bail has been granted to another accused could not form the basis for the detenu being released on bail in the immediate future, considering the fact that the detenu's bail petition was dismissed, as recently as dated 11.09.2017.

7. This apart, there has been a delay in passing the impugned order.

7.1. The detenu was arrested on 06.9.2017 whereas the impugned order was passed on 15.09.2017.

8. Furthermore, as observed above, even though notice in this petition was issued on 06.01.2017, no counter affidavit has been filed to date.

9. Consequently, the assertions made in the petition have remain untraversed.

10. Thus, for the foregoing reasons, we inclined to quash the impugned order. It is ordered accordingly.

11. The detenu shall be released forthwith, unless he is required to remain in custody in 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.

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(R.S.A.,J)

(N.S.K.,J)

13.11.2017

Index: Yes/No

Internet: Yes

Note to office:

1. Issue copy today itself

2. Copy to be communicated to the concerned Jail Superintendent via fax

To

1. The Secretary, Home
Prohibition and Excise Department
Fort.St.George, Chennai -600 009
2. District Collector
and District Magistrate,
Krishnagiri District
Krishnagiri.
3. The Joint Secretary,
Public (Law and order)
Secretariat, Fort St.George, Chennai.
4. The Superintendent
Central Prison, Salem
5. The Public Prosecutor, High Court, Chennai.



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**RAJIV SHAKDHER, J.
and
N.SATHISH KUMAR, J.**

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