

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2017

Coram

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

H.C.P.No.1853 of 2017

Mani

... Petitioner

Vs.

1. The State of Tamil Nadu  
Rep. By the Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 9.
  2. The Commissioner of Police  
Salem City  
Salem.
  3. The Superintendent of Prison  
Borstal School  
Pudukottai District.
- ....Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records from the 2<sup>nd</sup> respondent in connection with order in C.M.P.No.28/Goonda/Salem City/2017 dated 09.05.2017 and quash the same and produce the petitioner's brother namely Sakthivel, S/o.Sundarraaj, aged 20 years now confined in Borstal School, Pudukkottai under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.P.Pugalenth

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

O R D E R

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

1.This is a petition seeks to challenge the detention order dated 09.05.2017.

2. Notice in this petition was issued on 10.10.2017. Despite opportunities, being given to the State, no counter affidavit has been filed to date. Therefore, the assertions made in the petition have remain un-controverted.

3. A perusal of the detention order would show that one adverse case (Crime No.101 of 2017) has been noticed qua the detenu. Insofar as the adverse case is concerned the detenu is alleged to have committed offences under Sections 454, 457 and 380 IPC.

4. Insofar as the subject case is concerned (Crime No.213 of 2017) the detenu was produced before the learned Judicial Magistrate IV, Salem on 02.05.2017 on P.T.warrant and remanded to judicial custody until 16.05.2017. In Crime No.213 of 2017, the detenu is alleged to have committed offences under Section 379 IPC.

5. Counsel for the petitioner says that a perusal of the detention order would show that there is no application of mind. This contention is made on the ground that even though the Detaining Authority records that neither in Crime No.101 of 2017 nor in Crime No.213 of 2017, bail petitions have been made, an apprehension is expressed that the detenu may be enlarged on bail only on the ground that in a similar case, wherein an order was passed as far back as on 27.04.2016 (C.M.P.No.2566 of 2016), the accused was released on bail.

6. On the other hand, the learned Additional Public Prosecutor relies upon the impugned order to press for dismissal of the petition.

7. We have heard the learned counsel for the parties and perused the records. According to us, the contention advanced on behalf of the learned counsel for the petitioner, deserves to be accepted. Clearly, the Detaining Authority has recorded that no bail application has been moved by the detenu either in the adverse case or in the subject case (Crime No.213 of 2017), therefore, the likelihood of the detenu is being enlarged on bail, presently, does not appear to be imminent. The fact that in 2016, bail was granted to another accused cannot be a ground to detain the detenu or to come to the conclusion that there was a real possibility of the detenu being enlarged on bail. Each such case is dealt with taking into the facts and circumstances obtaining in the case at hand.

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

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.28/Goonda/Salem City/2017 dated 09.05.2017, passed by the second respondent is set aside. The detenu, namely, Sakthivel, S/o.Sundarraaj, male, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other 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 III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 9.
- 2.The Commissioner of Police  
Salem City  
Salem.
- 3.The Joint Secretary to Government,  
Public (Law & Order) Department,  
Secretariat, Chennai-9.
- 4.The Superintendent,  
Borstal School,  
Pudukkottai.
- 5.The Public Prosecutor,  
Madras High Court,  
Chennai.

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VR(07/11/2017)