

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

Coram

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

H.C.P.No.1857 of 2017

J.Jaintha Jarina

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 09.08.2017 in No.479/BCDFGISSSV/2017 against the petitioner's son Sulthan @ Sulthan Liyakath Ali, Son of Jalaludin, male aged 27 years and now her son is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Madhan Kumar

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, which seeks to assail the detention order dated 09.08.2017.

2. A perusal of the detention order would show that there are three (3) adverse cases have been noted against the detenu. These being : Crime No.504 of 2017; Crime No.729 of 2017; and Crime No.730 of 2017. In all three (3) cases, the detenu has been booked under Sections 379 of the IPC.

3. Insofar as the subject case is concerned, the same is registered as Crime No.1012 of 2017. In the said case, the detenu has been booked under Sections 341, 294(b), 336, 392, 397 and 506(ii) of the IPC.

4. The record shows that the detenu was arrested on 18.07.2017.

5. We have perused the records. We have also heard the learned counsel for the petitioner and Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 18.07.2017, the impugned detention order was passed on 09.08.2017. Notice in this petition was issued, by us, on 10.10.2017, despite which, no counter affidavit has been filed. Therefore, the delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, the detenu had moved for bail twice in Crime No.1012 of 2017. In the first instance, bail was dismissed on 28.07.2017, while the second bail petition was pending, on the date when the impugned order was passed. The Detaining Authority, however, entertained an apprehension that the detenu may be released on bail on the ground that in a similar case, which pertained to 2016, bail had been granted. Pertinently, the date of the order is not mentioned in the detention order. According to us, there has been a total non-application of mind. Even according to the Detaining Authority, bail petition in Crime No.1012 of 2017 in the first instance was dismissed and the second bail petition was pending on the date when the impugned order was passed. The "similar case" yardstick employed by the Detaining Authority, according to us, is flawed. The case pertained to 2016. The Detaining Authority has not noted as to how there was parity between the case pertaining to the detenu and the case of the other accused, which is categorized as similar case.

6. Thus, for the foregoing reasons, 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.479/BCDFGISSSV/2017 dated 09.08.2017, passed by the second respondent is set aside. The detenu, namely, Sulthan @ Sulthan Liyakath Ali, S/o.Jalal, male, aged about 27 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/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal Secretary to Government,
Home Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai - 600 066.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1857 of 2017

NR 12/12/2017

सत्यमेव जयते

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