

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

Coram

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

H.C.P.No.1904 of 2017

Unnamalai

... Petitioner

Vs.

1.The Principal Secretary,
Government of Tamil Nadu
Home, Prohibition and Excise Department
XVI Fort St. George,
Madras - 600 009.

2.The District Magistrate & District Collector,
Salem District,
Salem.

3.The Superintendent,
Central Prison,
Salem.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to cause the production of the body of her husband Velliyan @ Govindararaji, S/o.Aandi, aged about 38 years now confined in Central Prison, Salem who is in llegal detention by quashing the proceedings of the 2nd respondent in C.M.P.No.32/BLA/C2/2017 dated 08.06.2017 and to set him at liberty.

For Petitioner : Mr.V.Bhiman

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 08.06.2017.

2. A perusal of the detention order would show that insofar as the detenu is concerned, there are two (2) adverse cases are noted qua him. These cases are numbered as : Crime No.19 of 2016 and Crime No.17 of 2017. In respect of both cases, the detenu has been booked under Sections 4(1) (a), 4(1-A) of the Tamil Nadu Prohibition Act.

3. In respect of the subject case the detainee has, once again, been booked under similar provisions. The said case is registered as Crime No.256 of 2017.

4. The record shows that the detenu was arrested on 07.05.2017.

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

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

(i) First, though the detenu was arrested on 07.05.2017, the impugned order was passed on 08.06.2017. We had issued notice in this petition on 13.10.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, despite the fact that the Detaining Authority has noticed in paragraph No.4 of the impugned order that the bail petition moved by the detenu before the concerned Court was dismissed on 24.05.2017, it has come to the conclusion that the detenu was likely to be enlarged on bail. The reason furnished, is that, in similar case, which pertains to 2015 bail was granted. According to us, the reason is flawed. The "similar case" yardstick employed by the Detaining Authority is erroneous. The Detaining Authority has not alluded as to how there is parity between the two (2) cases. As noticed by us in other matters, bail is not granted by the Court, only because the provisions of law are identical. The Courts, while granting bail, on the other hand, look to various other factors including the gravity of offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

6. Thus, for the aforesaid 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 C.M.P.No.32/BLA/C2/2017 dated 08.06.2017, passed by the second respondent is set aside. The detenu, namely, Velliyan @ Govindararaji, S/o.Aandi, male, aged about 38 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 III)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department
XVI Fort St. George,
Madras - 600 009.
- 2.The District Magistrate & District Collector,
Salem District,
Salem.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Salem.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

सत्यमेव जयते H.C.P.No.1904 of 2017

CNR (CO)
NR 07/12/2017

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