

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.1926 of 2017

R.Sathiyavani

... Petitioner

Vs.

1.State rep. by Secretary to Government,
Home Prohibition and Excise Department
Secretariat, Chennai - 600 009.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in No.BCDFGISSSV No.91/2017 passed by the second respondent on 05.10.2017 set aside the same and direct the respondents to produce the ROOPAVATHY wife of Muruga Perumal, aged 48 years, who is now detained in Special Prison for Women, Puzhal, Chennai - 66 before this Court and set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran
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 challenge the detention order dated 05.10.2017.

2. A perusal of the detention order would show that four (4) adverse cases have been noted qua the detainee. These being : Crime No.530 of 2015; Crime No.18 of 2016; Crime No.250 of 2017; and Crime No.460 of 2017.

3. A close scrutiny of the details mentioned in a tabular form with regard to the adverse cases in the detention order would show that insofar as the 4th adverse case is concerned,

which is registered as Crime No.460 of 2017, the detainee was arrested on 13.09.2017.

3.1. Furthermore, it is also averred that on the day of arrest i.e. 13.09.2017, the detainee's son gave a statement under Section 161(iii) of the Cr.P.C, to the effect, that no bail petition had been filed.

4. However, in the latter part of the impugned detention order, it is stated that the detainee was arrested on 15.09.2017, in the subject case i.e., Crime No.463 of 2017. The arrest happened, according to the Detaining Authority in a raid conducted on 15.09.2017.

4.1. According to the counsel for the petitioner, there is a clear contradiction in the detention order as to the date of arrest of the detainee. It is submitted that if the detainee was already in custody on 13.09.2017 in connection with Crime No.460 of 2017 and no bail petition was moved how could he be arrested on 15.09.2017 and that too in a raid conducted by the Police.

4.2. Based on the aforesaid contradiction counsel for the petitioner says, apart from anything else, there is a total non-application of mind by the Detaining Authority. According to him, the impugned order is based on an imaginary set of facts.

5. Having heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor, in our view, the impugned order cannot be sustained for the following reasons:

(i) First, there is a complete non-application of mind, in as much as, as indicated above, in Crime No.460 of 2017, the detainee was arrested on 13.09.2017. It is also noted in the impugned order that the son of the detainee had indicated, in a statement made under Section 161(iii) of the Cr.P.C., that no bail petition had been filed. Despite which, the Detaining Authority notes that pursuant to the raid conducted, the detainee was arrested on 15.09.2017. Clearly, this was not possible. The Detaining Authority appears to have overlooked this crucial aspect.

(ii) Second, even if we were to assume that the detainee was arrested on 15.09.2017, there is no explanation for the delay in passing the impugned order. The impugned order was passed on 05.10.2017. Notice in this petition was issued on 20.10.2017, despite which, no counter affidavit has been filed. Therefore, the delay in passing the impugned detention order remains unexplained.

(iii) Third, even according to the Detaining Authority, the bail petition filed by the detainee in Crime No.463 of 2017 was pending, on the date when the impugned order was passed. The Detaining Authority, however, has used the yardstick of "similar cases" and too qua cases pertaining to 2015, in coming to the conclusion that there was a real possibility of the detainee being released on bail. According to us, the conclusion reached

by the Detaining Authority is flawed.

(iii)(a) Clearly, on the date when the impugned order was passed, the bail petition of the detainee was pending in Crime No.463 of 2017. The fact that in 2015, bail had been obtained by another accused, could not have formed the basis of entertaining an apprehension that the detainee was likely to be enlarged on bail. The Detaining Authority in our opinion employed an erroneous measure.

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.BCDEFGISSSV No.91/2017 dated 05.10.2017, passed by the second respondent is set aside. The detainee, namely, Roopavathy, W/o.Murugaperumal, female, aged about 48 years, is directed to be released forthwith unless her 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 V)

//True Copy//

Sub Assistant Registrar

vsm
To

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

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

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

4.The Superintendent,
Central Prison for Women,
Puzhal, Chennai - 600 066.
[In duplicate for communication to the detenue]

5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1926 of 2017

aa12/12/2017



WEB COPY