

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1933 of 2017

Mahalakshmi

... Petitioner

vs

1.State of Tamilnadu

Rep. by its Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
The Commissioner's Office,
Vepery, Chennai - 600 007.

... Respondents

* * *

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.551/BCDFGISSV/2017, dated 08.09.2017, passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Settu @ Manikandan, S/o.Thirunavukarasu, aged about 31 years, the detinue, now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's husband Settu @ Manikandan, S/o.Thirunavukarasu, aged about 31 years, the detinue herein at liberty.

सत्यमेव जयते

* * *

For Petitioner : NA

For Respondents: Mr.V.M.R.Rajentran
Additional Public Prosecutor

O R D E R

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

1. Even though, there is no representation on behalf of the petitioner, we have examined the matter.

2. This petition has been filed to assail the detention order dated 08.09.2017.

2.1. A perusal of the impugned detention order would show that three (3) adverse cases have been noticed qua the detainee. These being : Crime No.2386 of 2017; Crime NO.1091 of 2017; and Crime No.1279 of 2017.

2.2. In so far as the subject case is concerned, the same is registered as Crime No.1100 of 2017.

3. The record shows that the detainee was arrested on 14.08.2017. Furthermore, the record also shows that though the detainee had moved bail petition in Crime No.1100 of 2017, the same was pending on the date, when the impugned order was passed. The Detaining Authority, however, after taking into account the fact that the relatives of the detainee have moved bail application in Crime No.1091 of 2017, has, evidently, come to the conclusion that there was a likelihood of the detainee being enlarged on bail. In support of this conclusion, the Detaining Authority has also referred to a bail order granted to another accused in Crime No.656 of 2016. Pertinently, the date of the order is not adverted to by the Detaining Authority.

4. We have perused the record and heard the learned Additional Public Prosecutor.

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

(i) First, that the detainee was arrested on 14.08.2017. The impugned order was passed on 08.09.2017. Notice in this petition was issued on 23.10.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even though, the Detaining Authority notices the fact that in Crime No.1100 of 2017, the detainee's bail petition was pending, it went on to conclude, according to us, erroneously, that the detainee would be released on bail.

(ii)(a) The reasons given to support his conclusion are : (i) that the relatives were intending to move for bail in Crime No.1100 of 2017, and (ii) in another case, i.e., in Crime No.650 of 2016, accused was granted bail.

(ii)(b) In our opinion, the reasons given could not have permitted the Detaining Authority to reach the conclusion, which, it did, with regard to the possibility of the detainee being released on bail, given the fact that in Crime NO.1100 of 2017, the bail petition filed by the detainee was pending, on the date, when, the impugned order was passed.

6. Thus, 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 Memo No.551/BCDFGISSSV/2017, dated 08.09.2017, passed by the second respondent is set aside. The detenu, namely, Settu @ Manikandan, S/o.Thirunavukarasu, aged about 31 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/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gg

To

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
- 2.The Commissioner of Police,
Chennai Police,
Vepery, Chennai - 7.
- 3.The Joint Secretary,
Public Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
Madras High Court,
Madras.

WEB COPY

H.C.P.No.1933 of 2017

TR(22/12/2017)