

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.1946 of 2017

Jansirani

... Petitioner

vs

1.The State of Tamilnadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

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

... Respondents

* * *

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention order made in D.O.No.37/2017-C2, dated 01.10.2017, passed by the District Collector and District Magistrate, Thiruvannamalai District, Thiruvannamalai, the second respondent herein and set aside the same and direct the respondents to produce the detinue before this Court and set the detinue Thiru.Ramaraajan, S/o.Kasi, aged 26 years, now confined in Central Prison, Vellore, at liberty.

* * *

For Petitioner: Mr.R.Balakrishnan

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. This petition seeks to challenge the detention order, dated 01.10.2017.

2. A perusal of the impugned detention order would show that there are two (2) adverse cases noticed qua the detinue. These being : Crime No.390 of 2017; and Crime No.443 of 2017. In

both cases, to begin with, the detainee has been booked under Section 4(1)(aa) read with Section 4(1-A)(ii) of the Tamil Nadu Prohibition Act, 1937 (TNP Act), later on the offending provisions were altered to Section 4(1)(aa) of the TNP Act.

2.2. In so far as the subject case is concerned, the same is registered as Crime No.676 of 2017. In this case, the detainee has, once again, been booked under Section 4(1)(i), 4(1)(aaa) read with 4(1-A)(ii) of the TNP Act.

3. The record shows that the detainee was arrested on 01.09.2017.

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

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

(i) First, that the detainee was arrested on 01.09.2017. The impugned order was passed on 01.10.2017. Notice in this petition was issued on 24.10.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, a perusal of paragraph 5 of the impugned order shows that though, the detainee had moved bail applications in Crime No.676 of 2017, either no order was passed ; or, no orders were pressed for. The Detaining Authority, however, noticed the fact that the bail was granted to the detainee in Crime No.390 of 2017 and Crime No.443 of 2017.

(ii)(a) Furthermore, the Detaining Authority also notices the fact that in a similar case relating to 2015 (Crime No.376 of 2015), bail was granted.

(ii)(b) Based on these factors, the Detaining Authority, according to us, erroneously, reached a conclusion that there was a possibility of the detainee being enlarged on bail.

(ii)(c) In our opinion, the Detaining Authority has not applied its mind to material facts. Clearly, in Crime No.676 of 2017, on the date, when, the impugned order was passed, the detainee had not obtained any bail.

(ii)(d) The apprehension expressed by the Detaining Authority was, therefore, unfounded on the date of passing of the impugned order.

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 D.No.37/2017-C2, dated 01.10.2017, passed by the second respondent is set aside. The detenu, namely, Ramarajan, S/o.Kasi, 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 (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
- 2.The District Collector and
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.
- 3.The Joint Secretary,
Public Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Additional Public Prosecutor,
Madras High Court,
Madras.

सत्यमेव जयते

H.C.P.No.1946 of 2017

nr 22/12/2017

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