

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2017

Coram

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

H.C.P.No.1986 of 2017

Ms.Latha

... Petitioner

Vs.

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

2. The District Collector and
District Magistrate,
Vellore District,
Vellore - 9.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records of detention passed by the second respondent dated 11.10.2017 in C3.D.O/101/2017 against the petitioner's husband Kichili @ Venkatesan, male aged 49 years, S/o.Ponnusamy, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detnue before this Court and set him at liberty.

For Petitioner : Mr.Senthilvel
for Mr.D.Balaji

For Respondents : Mr.V.M.R.Ranjetrn
Additional 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 11.10.2017.

1.1. A perusal of the Detention Order would show that two (2) adverse cases have been noted qua the detainee/Mr.Kichili @ Venkatesan. These being : Crime No.125 of 2017 and Crime No.231 of 2017. In respect of both cases, the detainee has been booked under sections 4(1)(i), 4(1) (aaa), 4(1-A) (ii) of Tamil Nadu Prohibition Act, 1937.

2. Insofar as the subject case is concerned, it is registered as Crime No.336 of 2017. In this case, the detainee/Mr. Kichili @ Venkatesan has been, once again, booked under identical provisions of the Tamil Nadu Prohibition Act, 1937 read with section 328 of the IPC.

2.1. The record shows that the detainee/Mr.Kichili @ Venkatesan was arrested on 28.09.2017.

3. We have heard the learned counsel appearing on behalf of the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents. We have also perused the record.

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

4.1. Though, the detainee/Mr.Kichili @ Venkatesan was arrested on 28.09.2017, the impugned order was passed on 11.10.2017. In this petition, notice was issued on 26.10.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay remains unexplained.

4.2. A perusal of the impugned order would show that, though, the detainee/Mr.Kichili @ Venkatesan had moved for bail in Crime No.336 of 2017, the bail petition was pending on the date, when, the impugned order was passed. The detaining authority, after noticing the fact that in the two (2) adverse cases referred to above, bail had been granted to the detainee/Mr.Kichili @ Venkatesan, came to the conclusion that the detainee/Mr.Kichili @ Venkatesan was likely to be released from custody. In support of this conclusion, the detaining authority has also observed, albeit, generally, that bails are granted in such like cases.

4.3. In our opinion, the aforementioned conclusion of the Detaining Authority is flawed, as, concededly, the bail petition filed by the detainee in Crime No.336 of 2017 was pending. Therefore, despite the fact that the detainee had been granted bail in the aforementioned two (2) adverse cases, he could not have been released from custody, till such time bail petition in Crime No.336 of 2017 was adjudicated upon in his favour.

4.4. General observation of the Detaining Authority that bails are granted in such like cases, in our view, could not have formed a basis for coming to the conclusion that the detainee will be enlarged from custody.

4.5. More importantly, the detainee/Mr. Kichili @ Venkatesan was arrested on 28.09.2017. The sample taken by the police authorities was sent to Court only on 04.10.2017. There is, once again, unexplained delay on the part of the State in this regard.

5. Thus, for the foregoing reasons, as indicated above, the impugned order is liable to be quashed. It is ordered accordingly.

6. In the result, the Habeas Corpus Petition is allowed. The Order of detention in No. C3.D.O/101/2017 dated 11.10.2017, passed by the second respondent is quashed. The detainee, namely, Mr. Kichili @ Venkatesan, son of Mr. Venkatesan, aged about 49 years, is directed to be released forthwith unless his custody is required in connection with another case.

7. Consequently, 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

ggs/vrc

To

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

2. The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

3. The District Collector and
District Magistrate,
Vellore District,
Vellore - 9.

4. The Superintendent,
Central Prison
Vellore.

5. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.D.Balaji Advocate sr 85946

H.C.P.No.1986 of 2017

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