

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2017

Coram

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

H.C.P.No.1996 of 2017

Bharath @ Bharath Kumar

... Petitioner

Vs.

1.State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.

2.District Collector & District Magistrate,
Erode District,
Erode.

... 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 2nd respondent made in the detention order in Cr.M.P.No.16/Goona/2017 C1 dated 26.07.2017 and quash the same and direct the respondents to produce the detenu viz., Bharath @ Bharath Kumar, S/o.late Manoharan, now undergoing detention in Central Prison, Coimbatore -18, before this Court and set him at liberty.

For Petitioner : No Appearance
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. There is no representation on behalf of the petitioner. We have, however, examined the record with the help of Mr.Rajentran, learned Additional Public Prosecutor.

2. This is a petition, whereby, challenge is laid to the detention order dated 26.07.2017.

3. A perusal of the detention order would show that there are seven (7) adverse cases noted qua the detenu. These seven (7) cases are registered as: Crime No.332 of 2015; Crime No.393 of 2015; Crime No.416 of 2015; Crime No.429 of 2015; Crime No.267 of 2016; Crime No.405 of 2016; and Crime No.417 of 2017.

4. Insofar as the subject case is concerned, it is registered as : Crime No.428 of 2017. In the subject case, the detenu has been booked under Sections 392 r/w 397 of the IPC.

5. The record shows that the detenu was arrested on 15.06.2017.

6. Having perused the records and heard the learned Additional Public Prosecutor, we are of the view that the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 15.06.2017, the impugned detention order was passed, after much delay, i.e., on 26.07.2017. Notice in this petition was issued on 27.10.2017. Despite opportunity being given, the State has not filed a counter affidavit in the matter. Consequently, the delay in passing the impugned detention order remains unexplained.

(ii) Second, a perusal of paragraph No.5 of the impugned order would show that even according to the Detaining Authority, the detenu had moved bail petitions in Crime No.417 of 2017 and Crime No.428 of 2017 and that both petitions were dismissed by the concerned Court on 11.07.2017. However, despite this position obtaining, the Detaining Authority has entertained an apprehension that there was real possibility of the detenu being enlarged on bail, only on account of the fact that in similar cases pertaining to 2016, bail was granted to the accused in those cases. According to us, this conclusion is flawed. Since the detenu's bail petitions were dismissed, the Detaining Authority could not have employed the "similar case" yardstick to reach a conclusion that there was a real possibility of the detenu being enlarged on bail. As observed by us, in several other matters the "similar case" yardstick is not the correct measure in arriving at such conclusion. Bail, if any, is granted by Courts by looking to various factors, which includes the possibility of the accused fleeing from justice, the gravity of offence and the ability of the accused to suborn witnesses.

7. Thus for the foregoing reasons, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.16/Goona/2017 C1 dated 26.07.2017, passed by the second respondent is set aside. The

detenu, namely, Bharath @ Bharath Kumar, S/o.late Manoharan, male, aged about 29 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-)

//True Copy//

Sub Assistant Registrar

vsm

To

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

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SSI (CO)
TR(08/12/2017)