

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

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

H.C.P.No.2023 of 2017

Sulai Khan Beevi

... Petitioner

Vs.

The State represented by its

1.The Secretary to the Government (Home),
Prohibition and Excise Department
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police
Salem City, Salem.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention dated 01.06.2017 passed by the 2nd respondent in C.M.P.No.32/Goonda/Salem City/2017 and quash the same and produce the petitioner's son, the detenu, Mohaideen Abdul Khadar, S/o.Kajakamal, aged about 29 years, detaining at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.Dr.S.Manoharan
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 01.06.2017.

2. A perusal of the impugned order would show that there is one (1) adverse case noted qua the detenu. This case is numbered as : Crime No.160 of 2017. Insofar as the said case is

concerned, the detenu has been booked under Sections 392 r/w 397 of the IPC.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.177 of 2017. In respect of the said case, the detenu has been booked under Section 341, 387 and 506 (ii) of the IPC.

3.1. The record shows that the detenu was arrested on 23.04.2017.

4. The counsel for the petitioner argues that the detention order cannot be sustained on account of the fact that no bail petition had been filed by the detenu on the date when the impugned order was passed. Learned counsel also argues that there has been much delay in passing the detention order.

5. The learned Additional Public Prosecutor on the other hand, relies on the impugned order and the records, to resist the petition.

6. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and perused the records. According to us, the detention order cannot be sustained for more than one reason:

(i) First, the detenu was, concededly, arrested on 23.04.2017, while the impugned order was passed on 01.06.2017. The delay has not been explained by the State.

(ii) Second, even according to the State, the detenu had not moved for bail either in the adverse case (i.e., Crime No.160 of 2017) or, in the subject case (i.e., Crime No.177 of 2017). The only reason, based on which the Detaining Authority has come to the conclusion that there is likelihood of the detenu being released on bail is, that the relatives of the detenu may move for bail. According to us, this cannot be the ground on which, such a conclusion could have been reached by the Detaining Authority. There was, to our minds, no real or imminent possibility of the detenu being enlarged on bail.

(iii) Third, even though notice in this petition was issued on 31.10.2017, no counter affidavit has been filed to date. Resultantly, the assertions made in the petition have remained untraversed.

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 C.M.P.No.32/Goonda/Salem City/2017, dated 01.06.2017, passed by the second respondent is set aside. The detenu, namely, Mohaideen Abdul Khadar, S/o.Kajakamal, 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/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to the Government (Home),
Prohibition and Excise Department
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police
Salem City, Salem.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Salem.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.2023 of 2017

NR 28/11/2017

सत्यमेव जयते

WEB COPY