

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.2043 of 2017

Gomathi

... Petitioner

vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the detention order passed by the second respondent in memo No.643/BCDFGISSSV/2017, dated 21.10.2017, against the petitioner's sister the detenu herein now confined in Central Prison, Puzhal, Chenna for women, Chennai, and set aside the same and direct the respondents to produce the Udhayavani, wife of Arun, aged about 30 years, before this Court and set her at liberty.

For Petitioner : Mr.S.Senthilvel
for M/s.A.Nirmal Kumar

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 is a petition, whereby, challenge is laid to the detention order, dated 21.10.2017.

2. A perusal of the impugned detention order would show that one adverse case has been noticed qua the detainee. This being : Crime No.1989 of 2015. In so far as this case is concerned, the detainee has been booked under Section 8(C) read with Section 20 (b) (ii) (C) of the NDPS Act.

2.1. In so far as the subject case is concerned, the same is registered as Crime No.1327 of 2017. The detainee has been booked under Section 8(c) read with 20(b)(ii)(A) of the NDPS Act.

3. The record shows that the detainee was arrested on 27.09.2017.

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, even though, the detainee was arrested on 27.09.2017, the impugned order was passed on 21.10.2017. Notice in this petition was issued on 02.11.2017, despite which, the State has not filed any counter affidavit. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, though, the Detaining Authority records that bail application moved in Crime No.1327 of 2017 was pending, it went on to entertain an apprehension that the detainee would be enlarged on bail, only on the ground that in a similar case, i.e., Crime No.1989 of 2015, bail was granted.

(ii)(a) In our opinion, the measure employed by the Detaining Authority is flawed. The fact is that on the date, when, the impugned order was passed, the detainee's bail application in Crime No.1327 of 2017 was pending. Clearly, at that juncture, there was no possibility of the detainee being enlarged on bail.

6. Thus, for the foregoing reasons, 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.643/BCDFGISSSV/2017, dated 21.10.2017, passed by the second respondent is set aside. The detenu, namely, Udhayavani, W/o.Arun, aged about 30 years, is directed to be released forthwith, unless her 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(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.
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 Additional Public Prosecutor,
Madras High Court,
Madras.

सत्यमेव जयते

H.C.P.No.2043 of 2017

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