

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.2049 of 2017

Muniamma

... Petitioner

-VS-

1.State of Tamilnadu
 Rep. by the Secretary, Home,
 Prohibition and Excise Department,
 Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
 The Commissioner Office,
 Vepery, Chennai – 600 007.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.616/BCDFGISSSV/2017, dated 09.10.2017 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Thiru.Devaraj s/o.Kuppusamy, aged about 46 years the detinue, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's son Thiru.Devaraj s/o.Kuppusamy, aged about 46 years the detinue herein at liberty.

For Petitioner	:	Mr.R.Muthukumar
For Respondents	:	Mr.V.M.R.Rajentran
		Additional Public Prosecutor

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1.This is a petition preferred to assail the detention order, dated 09.10.2017.

2.A perusal of the detention order would show, that four adverse cases came to be noticed, qua the detenu. These being: Crime No.1248 of 2017; Crime No.1177 of 2017; Crime No.1178 of 2017; and Crime No.1187 of 2017. In all these cases, the detenu, has been booked under Section 379 of the I.P.C. This apart, in so far as the subject case is concerned, the same is registered as Crime No.1190 of 2017. In this case, as well, the detenu has been booked, under Sections 294(b), 341, 323, 336, 397 and 506(ii) of the I.P.C.

2.1.Furthermore, the record shows, that in so far as the Crime No.1190 of 2017 was concerned, on the date when the impugned order was passed, bail petition filed was pending adjudication.

2.2.Furthermore, the record shows, that the detenu, had not moved any bail petition, in Crime No.1187 of 2017, on the date, when the impugned order was passed.

2.3.The detaining authority, however, based on the ground, that the relatives of the detenu, were likely to move for bail, and, for the reason, that in similar cases, bail was granted in 2016, came to the conclusion, that

there was a real possibility of the detenu being enlarged on bail.

3.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor. We have also perused the records.

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

(i)First, even though the detenu was arrested on 11.09.2017, the impugned detention order was passed only on 09.10.2017. Notice in this petition was issued on 06.11.2017, despite which, no counter affidavit has been filed, by the detaining authority. Resultantly, the delay, in passing the detention order, remains unexplained.

(ii) Second, even though the detaining authority noticed that no bail petitions were filed in Crime No.1187 of 2017, and, that in Crime No.1190 of 2017, bail petition was pending, on the date, when the impugned order was passed, it came to the conclusion, that the detenu would be enlarged on bail. The reason, given to support this contention, as noticed above, was that the relatives of the detenu were likely to move for bail in Crime No.1187 of 2017. This reason is sought to be supported by relying upon similar cases pertaining to 2016. According to us, there was a non-application of mind. As noted above, no bail petition has been filed by the detenu in Crime No.1187 of 2017. Furthermore, the bail petition filed in Crime No.1190 of 2017 was pending, on the date when the impugned order

was passed. The fact that the relatives could move for bail, or that, in any similar case, in 2016, bail was granted, according to us, could not have led to the detaining authority, coming to the conclusion, that the detenu was likely to be enlarged on bail.

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

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.616/BCDFGISSSV/2017, dated 09.10.2017, passed by the second respondent is set aside. The detenu, namely, Devaraj, son of Kuppusamy, aged about 46 years, is directed to be released forthwith, unless his detention is required, in connection with any other 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.

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[R.S.A.,J.] [N.S.K.,J.]

22.12.2017

Speaking Order/ Non Speaking Order

Index : Yes / No

Internet : Yes / No

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<http://www.judis.nic.in>

Note to office:

(i) Issue copy by today itself.

(ii) This order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To

- 1.The Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai – 600 007.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Additional Public Prosecutor,
Madras High Court,
Madras.



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**RAJIV SHAKDHER, J.
And
N.SATHISH KUMAR, J.**

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