

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2017

Coram

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

H.C.P.No.2057 of 2017
and CrI.M.P.No.16344 of 2017

Mrs.B.Vijaya
Petitioner

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Vs.

1.The State of Tamil Nadu
Represented by its Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

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

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Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records pertaining to the impugned order vide No.BCDFGISSSV No.644/2017 dated 24.10.2017 passed by the second respondent herein and approved by the first respondent and quash the same as illegal and consequently direct the respondents to produce the detenu Babu @ Benjamin, son of Chandran, aged 32 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Kingston Jerold
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)

CrI.M.P.No.16344 of 2017
in H.C.P.No.2057 of 2017

1.This is a petition seeking early hearing.

2. We had issued notice in the main matter on 06.11.2017, giving four (4) weeks time to the State to file a counter affidavit. The returnable date was fixed, as 14.12.2017.

2.1.However, the Registry, it appears, did not list the matter on 14.12.2017.

3. It is, in these circumstances, that the captioned petition is moved.

4. For the reasons given above, the petition is allowed.

4.1.Furthermore, with the consent of the counsel for the petitioner as well as the learned Additional Public Prosecutor, the main petition i.e., H.C.P.No.2057 of 2017 is taken up for hearing.

H.C.P.No.2057 of 2017

5. This is a petition, which seeks to challenge the detention order dated 24.10.2017.

6. A perusal of the detention order would show that there are five (5) adverse cases noted, qua, the detenu. These being : Crime No.3995 of 2015; Crime No.4300 of 2015; Crime No.1729 of 2016; Crime No.1800 of 2016; Crime No.1309 of 2017. In all these cases, the detenu has been booked under Section 379 of the IPC.

7. Insofar as, the subject case is concerned, the same is registered as : Crime No.1335 of 2017. Insofar as, the said case is concerned, the detenu has been booked under Sections 341, 294(b), 323, 336, 392, 397 and 506 (ii) of the IPC.

8. The record further shows that the detenu was arrested on 06.09.2017.

9. We have heard the learned counsel for the petitioner and Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. We have also perused the record.

10. Having regard to the totality of the circumstances, 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 06.09.2017, the detention order was passed, after nearly 1-1/2 months, on 24.10.2017. Despite the fact that notice in this petition was issued on 06.11.2017, to date, no counter affidavit has been filed on behalf of the State. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii)Second, even according to the Detaining Authority, in

Crime No.1335 of 2017, though the detenu had moved for bail, on the date when the impugned order was passed, the same was pending. The Detaining Authority, however, based on the fact that the detenu had obtained bail in Crime No.1309 of 2017, Crime No.1729 of 2016 and Crime No.1800 of 2016, came to the conclusion that there was a likelihood of the detenu being enlarged on bail. This conclusion was sought to be supported by the Detaining Authority by relying upon bail granted in 2015 to another accused in Crime No.384 of 2015. It is pertinent to note that though the number of bail petition has been given, the date of the order has not been furnished. According to us the conclusion reached by the Detaining Authority, is flawed, as admittedly, on the date of passing of the impugned order, the bail petition filed by the detenu in Crime No.1335 of 2017 was pending.

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

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSV No.644/2017 dated 24.10.2017, passed by the second respondent is set aside. The detenu, namely, Babu @ Benjamin, S/o.Chandran, male, aged about 32 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

//True Copy//

Sub Assistant Registrar

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To

1.The State of Tamil Nadu
Represented by its Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

4.The Superintendent,
Central Prison,
Puzhal, Chennai - 600 066.

5.The Registrar General,
High Court Madras.

6.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.S.Kingston Jarold, Advocate, S.R.No.90788

H.C.P.No.2057 of 2017
in Crl.M.P.No.16344 of 2017

CNR (CO)

RRK (20/12/2017)



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