

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.2059 of 2017

G.Ganesh

... 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.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, calling for the entire records of the 2nd respondent, in his proceeding No.220/BCDFGISSSV/2017 dated 29.04.2017 to quash the same and consequently direct the respondents to produce the detenu via., Ganesh, S/o.Govinda Naidu, aged 27 years now confined in Central Prison, Puzhal set him liberty forthwith.

For Petitioner : Mr.K.Mariappan

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, filed to assail the detention order dated 29.04.2017.

2. A perusal of the impugned detention order would show that there are two (2) adverse cases noted qua the detenu. These being : Crime No.668 of 2017; and Crime No.669 of 2017.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.676 of 2017.

4. Furthermore, the record shows that the detenu was arrested on 08.04.2017.

5. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. We have also perused the records.

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

(i) First, even though the detenu was arrested on 08.04.2017, the impugned detention order was passed, after much delay, i.e., on 29.04.2017. Notice in this petition was issued on 06.11.2017. To date, no counter affidavit has been filed by the State. Consequently, the delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, the detenu had moved bail petitions in two (2) adverse cases referred to above, i.e., Crime Nos.668 and 669 of 2017, which were pending, on the date when the impugned order was passed. Insofar as the subject case is concerned, i.e., Crime No.676 of 2017, clearly, no bail application was moved by the detenu. The Detaining Authority, however, in our view, erroneously has come to the conclusion that there was a real possibility of the detenu being released on bail, merely on the ground that in similar cases, bail had been obtained by the accused. According to us, this conclusion is flawed. The "similar case" yardstick employed by the Detaining Authority is not, in our view, the correct measure. Bail is granted by the concerned Court, taking into account 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.

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 No.220/BCDFGISSSV/2017 dated 29.04.2017, passed by the second respondent is set aside. The detenu, namely, Ganesh, S/o.Govinda Naidu, male, aged about 27 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 VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government (Home),
Prohibition and 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.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

सत्यमेव जयते

H.C.P.No.2059 of 2017

aa08/12/2017

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