

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.2094 of 2017

Velaganni

... Petitioner

vs

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

2.The District Collector and
District Magistrate,
Vellore District,
Vellore-9.

... Respondents

* * *

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records in connection with the order of detention passed by the second respondent dated 03.11.2017 in C3.D.O.No.117/2017, against the petitioner's husband Devan, S/o.Ethiraj, male aged 38 years, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detainee before the Court and set him at liberty.

* * *

For Petitioner : Mr.S.Senthilvel

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

WEB COPY
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 03.11.2017.

2. A perusal of the impugned detention order would show that there are four (4) adverse cases noticed qua the detainee. These being : Crime No.108 of 2016; Crime No.444 of 2016; Crime No.46 of 2017; and Crime No.160 of 2017. In all these cases, the detainee has been booked under Section 4(1)(i), 4(1)(aaa)

read with Section 4(1-A)(ii) of the Tamil Nadu Prohibition Act, 1937 (TNP Act). In so far as Crime No.108 of 2016; Crime No.46 of 2016 and Crime No.160 of 2017 are concerned, the detainee has been booked, in addition, under Section 328 of the IPC.

2.1. The record shows that in so far as the subject case is concerned, the same is registered as Crime No.471 of 2017. In this case as well, the detainee has been booked under the provisions of Section 4(1)(i), 4(1)(aaa) read with Section 4(1-A)(ii) of the TNP Act, and under Section 328 of the IPC.

3. Furthermore, the record shows that the detainee was arrested on 01.10.2017.

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, though, the detainee was arrested on 01.10.2017, the impugned order was passed on 03.11.2017. Notice in this petition was issued on 10.11.2017. To date, the State has not filed a counter affidavit. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, though, samples were taken by the police on 01.10.2017, they were sent to Court only on 04.10.2017. The delay, which is unexplained, in our view, is fatal to the case of the State.

(iii) Third, the Detaining Authority itself has noted that in Crime No.471 of 2017, though, the detainee had filed a bail application before the concerned Court, on the date, when, the impugned order was passed, the said bail petition was pending. The Detaining Authority, however, having regard to the fact that in one adverse case (Crime No.46 of 2017), bail had been granted to the detainee, came to the conclusion that there was a possibility of the detainee being enlarged on bail forgetting that bail application filed in Crime No.471 of 2017, as noticed above, was pending, on the date, when, the impugned order was passed.

(iii)(a). In our view, the fact that bail was granted in the adverse case could not have, necessarily, led to the conclusion that bail would be granted in Crime No.471 of 2017. In our opinion, circumstances obtaining in each case would, necessarily, have to be looked at by the concerned Court.

(iii)(b). The apprehension expressed by the Detaining Authority was, therefore, unfounded, at least, on the date of passing of the impugned order.

6. Thus, 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 C3/D.O.No.117/2017, dated 03.11.2017, passed by the second respondent is set aside. The detenu,

namely, Devan, S/o.Ethiraj, aged about 38 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-)

//True Copy//

Sub Assistant Registrar

gg

To

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
- 2.The District Collector and
District Magistrate,
Vellore District,
Vellore.
- 3.The Joint Secretary,
Public Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Additional Public Prosecutor,
Madras High Court,
Madras.

+1cc to Mr.D.BALAJI Advocate, S.R.No. 92418

H.C.P.No.2094 of 2017

TR(22/12/2017)