

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER

&

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2149 of 2017

Parthasarathy

... Petitioner

Vs.

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

2.The Commissioner of Police
Salem City.

... 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 22.08.2017 in C.M.P.No.65/GOONDA/Salem City/2017 against the detenu Parthasarathy, age 26 years, S/o.Rajendiran, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.Senthilvel for Mr.K.Shanmugam
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 22.08.2017.

2. A perusal of the detention order would show that qua the detenu four (4) adverse cases are noted. These being : Crime No.710 of 2014; Crime No.387 of 2015; Crime No.16 of 2016; and Crime No.480 of 2017. In all these cases, the detenu has been booked under Section 379 of the I.P.C.

3. Insofar as the subject case is concerned, it is registered as Crime No.293 of 2017. In respect of this case, the detenu has been booked under Sections 341, 387 and 506(ii) of the I.P.C.

4. The record shows that the detenu was arrested on 20.07.2017.

5. We have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. We have also perused the record. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, though the detenu was arrested on 20.07.2017, the impugned detention order was passed on 22.08.2017. Notice in this petition was issued on 15.11.2017. To date, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, a perusal of paragraph No.5 of the impugned order would show that the detenu had not moved any bail petitions in Crime No.480 of 2017 and Crime No.293 of 2017, on the date when the impugned order was passed. The Detaining Authority, however, appears to have entertained an apprehension that the detenu could be enlarged on bail based on an erroneous reason, which was, that the relatives of the detenu were intending to move bail applications. This conclusion is sought to be supported by relying upon a similar case, in which accused had been granted bail. According to us, the conclusion reached by the Detaining Authority, based on the aforesaid parameter, is flawed. Clearly, the detenu had not moved for bail in Crime No.480 of 2017 and Crime No.293 of 2017, on the date, when the impugned order was passed. The fact that the relatives of the detenu were intending to move for bail and that in a similar case bail was granted could not have been taken as the reason for coming to a conclusion that there was a likelihood of the detenu being released on bail.

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 C.M.P.No.65/GOONDA/Salem City/2017 dated 22.08.2017, passed by the second respondent is set aside. The detenu, namely, Parthasarathy, S/o.Rajendiran, male, aged about 26 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-IX)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to the Government,,
Home, Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police
Salem City.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Salem.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.K.SHANMUGAM Advocate, S.R.No. 88970

PPA(CO)
TR(14/12/2017)

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