

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2017

Coram

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

H.C.P.No.2230 of 2017

Latha

... Petitioner

Vs.

1.Government of Tamil Nadu,
rep. by its Secretary,
Co-operation, Food and Consumer Protection Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector &
District Magistrate,
Erode District,
Erode.

3. The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution
Department of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi - 110 001.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 06.11.2017 in Cr.M.P.No.22/Black Marketeer/2017 (C1) against the petitioner husband Panneer @ Paneerselvam, male aged 55 years, S/o.Karuppannan, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mrs.R.Subhadra Devi

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

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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 06.11.2017.

2. A perusal of detention order would show that two (2) adverse cases are noted qua the detenu. These being : Crime No.107 of 2016; and Crime No.97 of 2017.

3. Furthermore, the record shows that the detenu was arrested on 23.10.2017.

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 detenu was arrested on 23.10.2017, the impugned detention order was passed, on 06.11.2017. Though, notice in this petition was issued on 04.12.2017, the State, has chosen not to file a counter affidavit in the matter. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, a perusal of the impugned order would show that bail petition in Crime No.97 of 2017 and 112 of 2017 was dismissed on 27.10.2017 and 31.10.2017 respectively. Despite such a position obtaining, the Detaining Authority, in our opinion, erroneously reached a conclusion that there was a real possibility of the detenu being enlarged on bail, based on the fact that in a similar case, bail was granted, albeit, on 02.06.2015. According to us, the conclusion reached is flawed, as there was, in our view, no real and imminent possibility of the detenu being released on bail on the date, when the impugned order was passed. Bails by Court are not granted because, there is parity in the provisions, but, by taking into account various factors, which includes the gravity of offence, the ability of the accused to suborn witnesses, and the possibility of the accused fleeing from justice.

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 Cr.M.P.No.22/Black Marketeer/2017/C1 dated 06.11.2017, passed by the second respondent is set aside. The detenu, namely, Panneer @ Panneerselvam, S/o.Karuppannan,

male, aged about 55 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

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To

- 1.The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector &
District Magistrate,
Erode District,
Erode.
3. The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution
Department of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
- 4.The Superintendent,
Central Prison,
Coimbatore.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

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TR(22/12/2017)