

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

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

H.C.P.No.953 of 2017

Parvathi

... Petitioner

Vs.

1.State of Tamil Nadu represented
By the Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police
Greater Chennai Police,
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 records relating to the detention order passed by the 2nd respondent pertaining to the order made in BCDFGISSSV No.250/2017 dated 09.05.2017 is detaining the detenu under 2(f) of Tamil Nadu Act of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu Kalaiselvan @ Johnson, Son of Prabhu, aged about 26 years who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.Sundarajan
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, which seeks to assail the detention order dated 09.05.2017.

2. A perusal of the detention order would show that qua the detenu, two (2) adverse cases have been noted. These being : Crime No.254 of 2017 and Crime No.754 of 2017. In respect of

the first case, the detenu has been booked under Sections 457 and 380 of the IPC, while in respect of the second case, the detenu has been booked under Sections 454 and 380 of the IPC.

3. In so far as the subject case is concerned, the detenu has been booked under Sections 294(b), 341, 336, 394, 397 and 506(ii) of the IPC. This case has been registered as Crime No.794 of 2017.

3.1. The record shows that the detenu was arrested on 16.03.2017.

4. Submissions of counsel for the petitioner have been heard and also those of learned Additional Public Prosecutor. We have also perused the records. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, though the detenu was arrested on 16.03.2017, the impugned order was passed on 09.05.2017. There is unexplained delay. The State has not filed a counter affidavit in the matter, even though, notice in the petition was issued as far back as on 12.06.2017.

(ii) Second, a perusal of paragraph No.4 of the impugned order would show that the detenu had moved a bail application in the subject case i.e., Crime No.794 of 2017, before the Principal District and Sessions Judge, Thiruvallur, which was dismissed on 13.04.2017. Once again, the detenu had moved for bail application in the very same case, which, even according to the Detaining Authority, is pending. Furthermore, a perusal of observations made in the very same paragraph of the impugned order would show that the detenu had moved bail applications in Crime Nos.254 of 2017 and 754 of 2017, which were dismissed on 05.04.2017. Given these facts, according to us, there was no real likelihood of the detenu being enlarged on bail. The only reason cited by the Detaining Authority that the detenu could get enlarged on bail is that, in a similar case, i.e., Crime No.656 of 2016 bail was granted. It is required to be noticed that not only does the matter pertain to 2016, there is no reference to the date when the bail order was passed. According to us, this could not have been a ground for the Detaining Authority to come to the conclusion that there was a real and imminent possibility of the detenu being enlarged on bail.

5. Thus, for the foregoing reasons, as indicated above, we are of the view that the impugned order cannot be sustained. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.250/BCDFGISSSV/2017, dated 09.05.2017, passed by the second respondent is set aside. The detenu, namely, Kalaiselvan @ Johnson, S/o.Prabhu, 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/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police
Greater Chennai Police,
Chennai 600 007.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent, (BY FAX)
Central Prison,
Puzhal, Chennai.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.953 of 2017

NR 28/11/2017

सत्यमेव जयते

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