

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2018

Coram

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

H.C.P.No.2195 of 2017

Manimegalai

... Petitioner

Vs.

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

2.District Collector &
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 31.10.2017 in C3.D.O.No.111/2017 against the petitioner husband Ragupathy, male aged 29 years S/o.Vadivelu who is confined at Central Prison Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
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, which seeks to assail the detention order dated 31.10.2017.

2. A perusal of the impugned order shows that three (3) adverse cases have been noted qua the detenu. These being : Crime No.315 of 2015; Crime No.242 of 2016; and Crime No.526 of 2017.

3. The record also shows that the detenu was arrested on 27.09.2017.

3.1.Furthermore, the Detaining Authority, has noted in the impugned order that insofar as the subject case is concerned, which is registered as : Crime No.529 of 2017, the bail petition moved by the detenu in that case was pending, on the date, when the impugned order was passed. Despite this circumstance obtaining, the Detaining Authority has come to the conclusion that the detenu was likely to be released on bail, based on the result achieved in a "similar case" registered as : Crime No.200 of 2017.

4. We have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, the 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, even though the detenu was arrested on 27.09.2017, the impugned order was passed after a delay of more than one (1) month i.e., on 31.10.2017. Notice in this petition was issued on 21.11.2017, despite opportunity having been granted, no counter affidavit has been filed. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, on the date, when the impugned order was passed, the bail petition filed by the detenu in Crime No.529 of 2017 was pending adjudication. Therefore, according to us, the Detaining Authority, could not have come to the conclusion that there was likelihood of the detenu being released on bail, merely because, in a similar case, bail had been granted. Bail is granted not because of similarity in provisions, but by looking to various factors, including the gravity of the offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

5. Thus, having regard to the foregoing reasons, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3.D.O.No.111/2017 dated 31.10.2017, passed by the second respondent is set aside. The detenu, namely, Ragupathy, S/o.Vadivelu, male, aged about 29 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(CO)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to the Government,
Home Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
- 2.District Collector &
District Magistrate
Vellore District
Vellore-9
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Vellore.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

+1 cc to Mr.D.Balaji Advocate sr 21

H.C.P.No.2195 of 2017

gmr(co)
aa02/01/2018

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