

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2018

Coram

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

H.C.P.No.2202 of 2017

Selvi

... Petitioner

Vs.

1.State of Tamil Nadu

Rep by its Secretary to Government [Home],
Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police
Coimbatore City,
Coimbatore.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records of the 2nd respondent in his proceeding No.C.No.62/G/IS/2017 dated 09.10.2017 to quash the same and consequently direct the respondents to produce the petitioner's son A.David Raja @ Raja, S/o.Appan, aged 22 years now confined in Central Prison, Coimbatore set him liberty forthwith.

For Petitioner : Mr.N.Chinnaraj
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 challenge the detention order dated 09.10.2017.

2. A perusal of the impugned order shows that two (2) adverse cases have been noted qua the detenu. These being : Crime No.757 of 2017; and Crime No.864 of 2017.

3. Insofar as the subject case is concerned, the same is

registered as : Crime No.865 of 2017.

4. As regards Crime No.757 of 2017 is concerned, the detenu has been booked under Sections 294(b), 324 and 506(ii) of the I.P.C. Insofar as Crime No.864 of 2017 is concerned, the detenu has been booked under the provisions of Sections 3(1) and 4 of TNPPD&L Act, 1992, (in short "the 1992 Act") and Section 506(ii) of the I.P.C.

5. The record shows that the detenu was arrested on 22.09.2017. A perusal of paragraph No.9 of the impugned order would show that insofar as the second adverse case is concerned i.e., Crime No.864 of 2017, no bail petition was filed by the detenu, on the date, when the impugned order was passed.

6. It may be also pertinent to note that though the Detaining Authority observes in paragraph No.8 of the impugned order that the details of the bail petition moved in the first adverse case i.e., Crime No.757 of 2017 have been given in first paragraph of the very same order, we find that those details are not provided. The Detaining Authority, it appears, inter alia has reached the conclusion that there was a real possibility of the detenu being enlarged on bail, as in a similar case bail had been granted by the concerned Court.

7. 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 impugned order. According to us, the same is flawed for the following reasons:

(i) First, even though the detenu was arrested on 22.09.2017, the impugned order was passed on 09.10.2017. Notice in this petition was issued on 22.11.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even according to the Detaining Authority, in the second adverse case, no bail petition had been moved. As noted above, as to whether or not bail petition had been moved in the first adverse case is not recorded in the impugned order, though an observation to the contrary is made in paragraph No.8 of the very same order. The Detaining Authority, it appears has come to the conclusion that there was a real possibility of the detenu being released on bail, based on the sole fact that in a similar case, bail had been granted. According to us, the conclusion reached by the Detaining Authority is erroneous. There is a total non application of mind, as clearly in the second adverse case, no bail application had been filed.

8. Thus, for the foregoing reasons, we are inclined to

quash the impugned order. It is directed accordingly.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.62/G/IS/2017 dated 09.10.2017, passed by the second respondent is set aside. The detenu, namely, David Raja @ Raja, S/o.Appan, male, aged about 22 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-II)

//True Copy//

Sub Assistant Registrar

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To

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

H.C.P.No.2202 of 2017

TR(03/01/2018)