

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.2282 of 2017

Jagathambal

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to Government,
Department of Prohibition & Excise (Home),
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police
Chennai City Police,
Greater Chennai,
Commissioner Office, Vepery,
Chennai - 600 007.

3.The Inspector of Police
T-5, Thiruverkadu Police Station,
Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order in No.503/BCDFGISSSV/2017 dated 21.08.2017 on the file of second respondent herein and set aside the same as illegal and direct to the respondents to produce the detenu Rajesh, Son of Munusamy, aged about 24 years, now confined at Central Prison, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraj Kandasamy
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 21.08.2017.

2. A perusal of the impugned order shows that there are five (5) adverse cases noted qua the detenu. These being : Crime No.375 of 2017; Crime No.382 of 2017; Crime No.496 of 2017; Crime No.998 of 2017 and Crime No.1146 of 2017. Out of the five (5) cases, in the last three (3) adverse cases, the detenu has been booked under Section 379 of the I.P.C. Insofar as the first two (2) adverse cases are concerned, the detenu has been booked under Sections 454 and 380 of the I.P.C. and Sections 461 and 511 of the I.P.C. respectively.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.1170 of 2017. Qua this case, the detenu has been booked under Sections 341, 294(b), 336, 427, 397 and 506(ii) of the I.P.C.

3.1. Furthermore, the record shows that the detenu was arrested on 30.07.2017.

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, though the detenu was arrested on 30.07.2017, the impugned order was passed only on 21.08.2017. Notice in this petition was issued on 30.11.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even though the Detaining Authority notes that in Crime No.1170 of 2017 bail petition filed was pending and that in Crime No.1146 of 2017, no bail petition had been moved, it came to the conclusion, which according to us is erroneous, that the detenu was likely to be released on bail. The reason furnished to reach such a conclusion, as set out in the impugned order, is that the relatives of the detenu were taking steps to move a bail petition. According to us, there is total non-application of mind, as merely because, relatives intended to take steps to move for bail cannot lead to a conclusion that the detenu was likely to be enlarged on bail.

5. Thus, as indicated above, for the foregoing reasons, 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 No.503/BCDFGIISSSV/2017 dated 21.08.2017, passed by the second respondent is set aside. The detenu, namely, Rajesh, S/o.Munusamy, male, aged about 24 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 II)

/true copy/

Sub Asst. Registrar

vsm

To

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

H.C.P.No.2282 of 2017

nr 03/01/2018