

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2017

Coram

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

H.C.P.No.1172 of 2017

Hemanathan

... Petitioner

Vs.

1.The Commissioner of Police
Greater Chennai
Vepery, Chennai.

2.The Secretary to Government,
Home, Prohibition and Excise Department
Government of Tamil Nadu
Secretariat, Fort St. George,
Chennai - 9.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the first respondent herein in Memo No.274/BCDFGISSSV/2017 dated 18.05.2017, setting aside the order of detention passed therein and produce the petitioner Pei Hemanathan @ Hemanathan, S/o.Selvam, aged 25 years, who has now detained in Central Prison, Puzhal at Chennai and set him at liberty.

For Petitioner : Mr.R.Rajasekaran

For Respondents : Mr.V.M.R.Rajentran,

Addl. Public Prosecutor.

ORDER

(Order of the Court was made by **RAJIV SHAKDHER, J**)

1. This is a petition filed to assail the detention order dated 18.05.2017.

2. A perusal of the detention order would show that one adverse case (Crime No.778 of 2017) has been noted qua the detenu.

3. Insofar as the subject case is concerned, which is numbered as Crime No.786/2017, the detenu has been booked under Sections 341, 294(b), 336, 427, 392 r/w 397 and 506(ii) of the IPC. Admittedly, the detenu was arrested on 02.04.2017.

4. A perusal of the impugned order shows that the detenu has not moved any bail application either in the subject case, i.e., Crime No.786 of 2017 or in the adverse case i.e., Crime No.778/2017. The Detaining Authority, however, has entertained the apprehension that the detenu may be released on bail, as in a similar case, i.e., Crime No.360/2013, this Court had granted bail. In this behalf, there is a reference to another case of 2016 i.e., Crime No.656 of 2016, in which bail had been granted.

5. Having heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and examined the record, we are of the view that the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 02.04.2017, the detention order was passed after much delay i.e. On 18.05.2017.

(ii) Second, even according to the Detaining Authority, the detenu on the date of passing of the impugned order, had not moved for bail either in the subject case i.e., Crime No.786 of 2017 or in the adverse case i.e., Crime No.778 of 2017.

(iii) Third, the reason given by the Detaining Authority that, since, in a similar case, which pertained to 2013 and 2016, bail had been granted, and therefore, there was likelihood of the detenu being enlarged on bail, is in our view flawed. These were orders passed much prior to the date, when, the impugned detention order was passed. Detaining Authority has not given particulars of the date of the order. In our view, there is no real and imminent possibility of the detenu being released on bail.

6. Thus, for the foregoing reasons, we are inclined to quash the impugned order. It is ordered accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.274/BCDFGISSSV/2017 dated 18.05.2017, passed by the first respondent is set aside. The detenu, namely, Pei Hemanathan @ Hemanathan, S/o.Selvam, is directed to be released forthwith unless his detention is required in connection with any other 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.

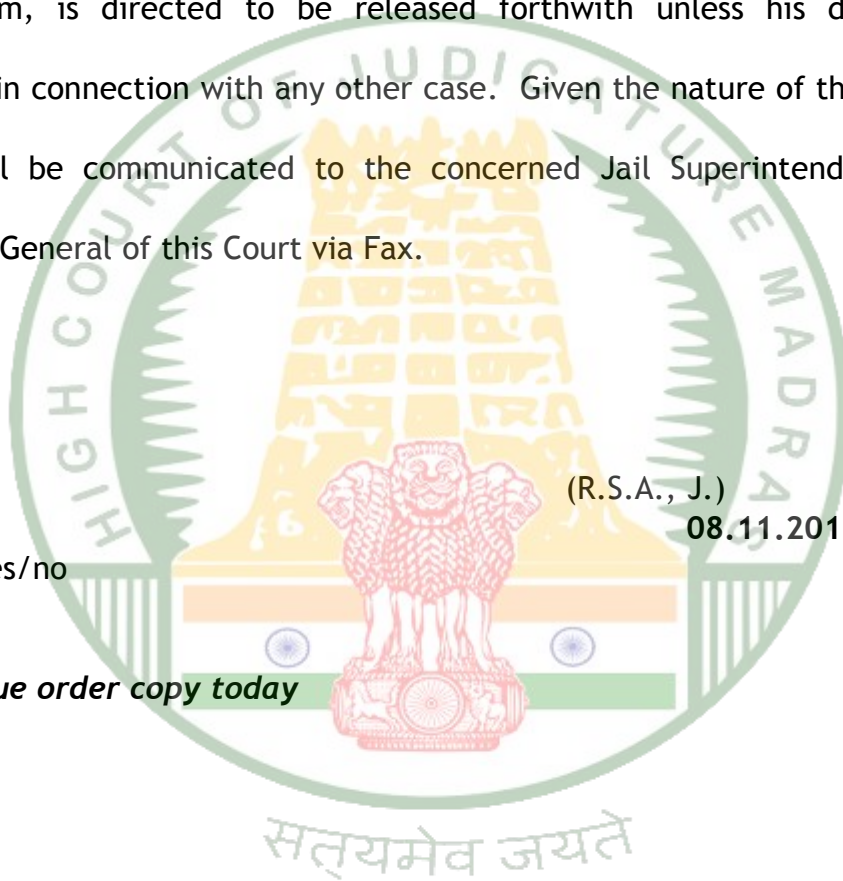
(R.S.A., J.)

(N.S.K., J.)

08.11.2017

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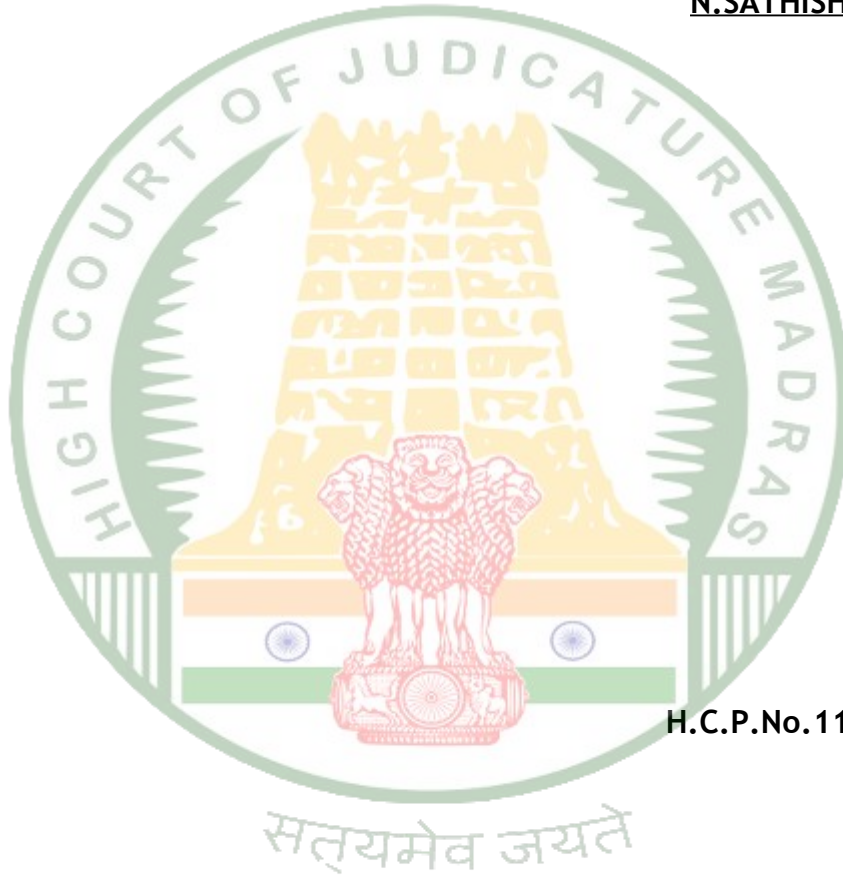
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- 3.The Superintendent,
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- 4.The Public Prosecutor,
Madras High Court,
Chennai.



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RAJIV SHAKDHER, J.
and
N.SATHISH KUMAR, J.

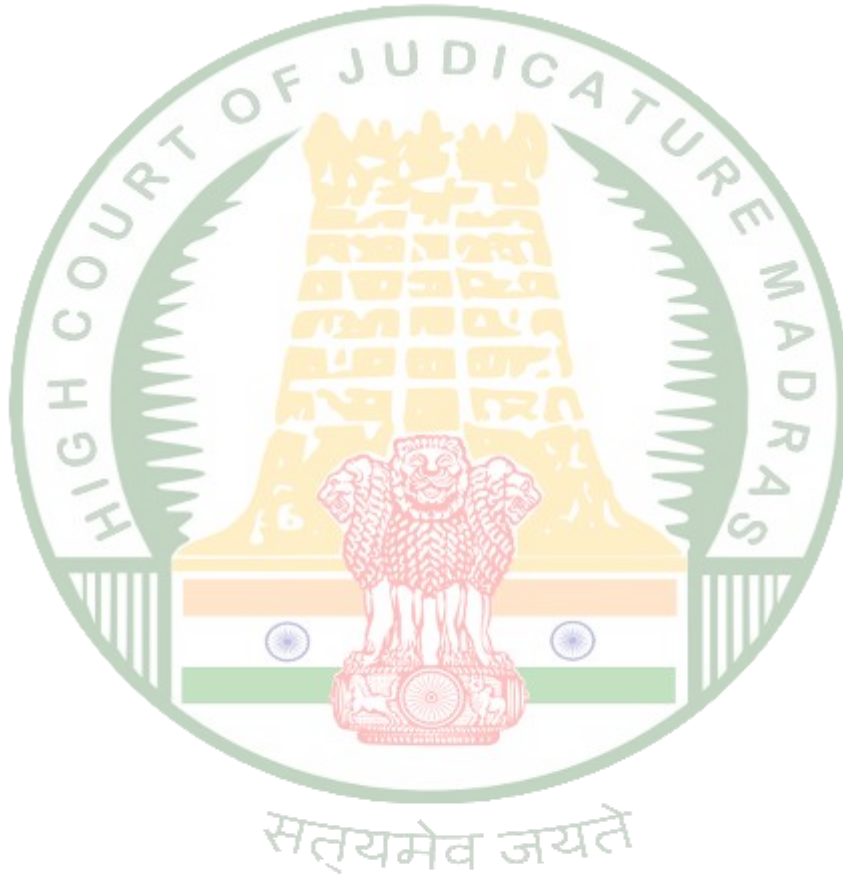
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