

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2017

Coram

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

H.C.P.No.1206 of 2017

S.Rajeshwari

... Petitioner

Vs.

- 1.The Secretary to Government,
Government of India,
Ministry of Home Affairs (Department of internal Security)
North Block,
New Delhi - 110 001.
 - 2.The Additional Secretary to Government (Home)
Government of Puducherry,
Chief Secretariat, Gubert Avenue,
Puducherry.
 - 2.The District Collector and District Magistrate
1st floor, Vazhadvavoor Road,
Kavundanpalayam.
- ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in No.01/DM/RO/D2/PPASAA/2017 dated 10.06.2017 on the file of the 3rd respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner's husband Sankar @ Monthai Sankar, S/o.Duraikannu, aged about 35 years, who now detained in Central Prison, Kalapet, Puducherry, before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhikumar
For Respondents : Mr.S.Arockiam, CGSC for R1,
Mr.Balamurugane,
Addl. Public Prosecutor (Pondicherry)
for R2 & R3.

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 10.06.2017.

2. Notice in this petition was issued on 11.07.2017. Despite opportunities, being given to the respondents, no counter affidavit has been filed to date. Therefore, the assertions made in the petition have remain uncontroverted.

3. Insofar as the detenu is concerned, there are two (2) dozens adverse cases noted in the impugned order. A perusal of impugned order would show that out of 24 adverse cases, one (1) case is preventive in nature, while the detenu has been convicted in three (3) cases. Furthermore, the impugned order also shows that in eleven (11) cases, the detenu stands acquitted. This apart, trial is pending in six (6) cases; investigation is on in two (2) cases, and one (1) case is yet to be taken on file.

3.1. As regards the subject case, which is registered as : Crime No.95 of 2017, the detenu has been booked under Sections 341, 294(b), 323 and 506(i) IPC.

4. The counsel for the petitioner says that the impugned order is unsustainable for the following reasons:

(i) First, the impugned order while adverting to the fact that in the ground case (Crime No.95 of 2017), bail petition was filed has not set out the status of the said bail petition as on the date when the said order was passed.

(ii) Second, though the remand report, dated 27.05.2017, is on record, the order remanding the detenu to judicial custody is not placed on record.

(iii) Third, illegible copies of the documents, based on which, the impugned order has been passed, were furnished to the detenu. By way of example, reference is made to page Nos.42 to 45 and 51 to 57.

(iv) Fourth, that even though the detenu was arrested on 26.05.2017, the detention order was passed only on 10.06.2017, after much delay.

(v) Lastly, intimation of arrest was not given. For this purpose, our attention was drawn to the arrest memo.

5. Mr.Balamurugane, who appears for the respondents, resists the petition and for this purpose, relies upon the impugned order.

6. We have heard the learned counsel for the parties and perused the record. According to us, as contended by the learned counsel for the petitioner, each of the ground of challenge as noted above is clearly made out and therefore, in our opinion, the detention order cannot be sustained.

6.1. The remand order was not concededly, furnished to the detenu. Though a reference is made in the impugned order that the bail petition was filed vis-a-vis, Crime No.95 of 2017, the status of the same is not adverted to in the impugned order. Some of the documents furnished to the detenu, are indeed illegible.

6.2. More particularly, what has persuaded us to intervene in the matter, is that, even though the detenu was arrested on 26.05.2017, the detention order was passed, after a delay of more than two (2) weeks i.e., on 10.06.2017.

6.3. We are also constrained to note that the arrest memo does not bear the signature of the person(s), who were informed with regard to the factum of arrest of the detenu.

7. For all these reasons, we are inclined to quash the detention order, as indicated above. It is ordered accordingly.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.01/DM/RO/D2/PPASAA/2017 dated 10.06.2017, passed by the third respondent is set aside. The detenu, namely, Sankar @ Monthai Sankar, S/o.Duraikannu, male, aged about 35 years, 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

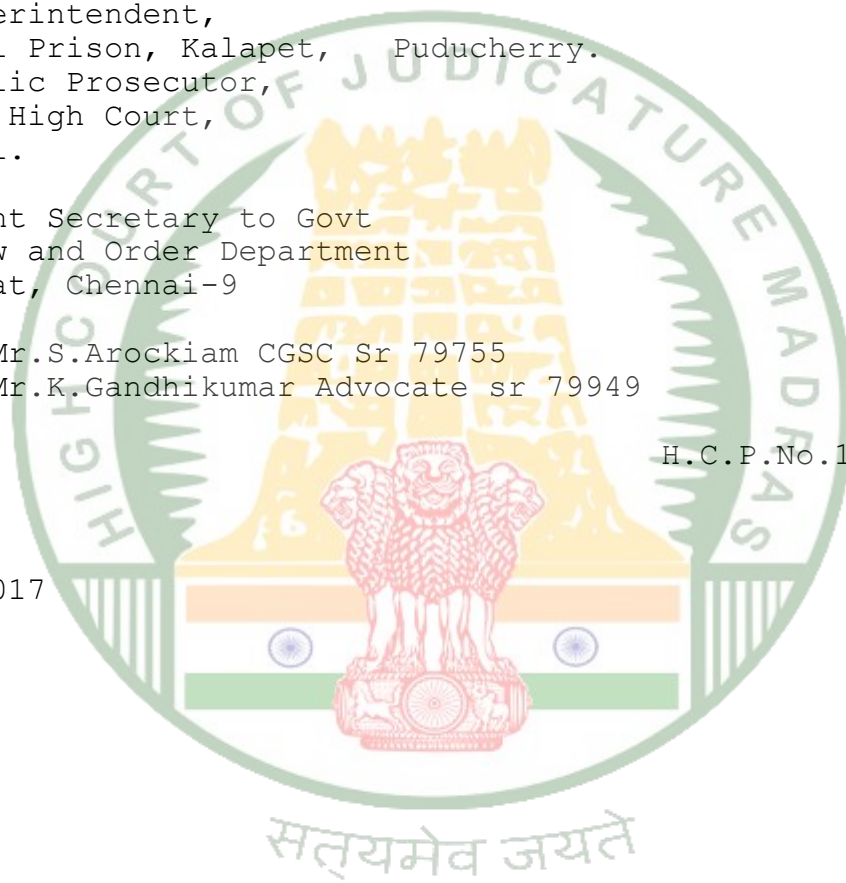
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1st floor, Vazhadhavoor Road, Kavundanpalayam.
- 4.The Superintendent,
Central Prison, Kalapet, Puducherry.
- 5.The Public Prosecutor,
Madras High Court,
Chennai.
- 6.The Joint Secretary to Govt
Public Law and Order Department
Secretariat, Chennai-9

+1 cc to Mr.S.Arockiam CGSC Sr 79755

+1 cc to Mr.K.Gandhikumar Advocate sr 79949

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