

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2017

Coram

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

H.C.P.No.1262 of 2017

K.Ramanathan

... Petitioner

Vs.

1. The Secretary to Government
Home Department,
Chief Secretariat, Gubert Avenue,
Pondicherry 605 001.

2.The District Collector and
District Magistrate,
Government of Puducherry,
Office of the District Magistrate,
Puducherry.

3.The Secretary to Government
Government of India
Ministry of Home Affairs
(Department of Internal Security)
North Block,
New Delhi 110001.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent dated 28.06.2017 in Memo No.05/DM/RO/D2/PPASAA/2017 against the brother of the petitioner Nithiyanandham male aged 37 years, son of Krishnaraj, who is confined at Central Jail, Kalapet, Puducherry and set aside the same and consequently direct the respondents to produce the detainee before this Court and set him at liberty.

For Petitioner : Mr.A. Saranraj
For Respondents : Mr.Bharatha Chakravarthi,
Public Prosecutor (Puducherry)
[for R1 and R2]

Mr.S. Arockiam
Central Government Standing Counsel
[For R3]

O R D E R

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

1. This is a petition which is directed against the detention order dated 28th June 2017. A perusal of the detention order would show that there are 15 adverse cases noted, qua the detainee. Out of 15 adverse cases, the detainee has been acquitted in two (2) cases, while 13 cases are either pending or under investigation.

2. In the subject case, which is registered as Cr.No.105 of 2017, the detainee has been arrested under Section 25(1-A) of Arms Act, 1954. The learned counsel for the petitioner says that the impugned order is flawed for the following reasons:

(i) Copy of the bail petition said to have been filed was not furnished.

(ii) Status of the bail petition has not been articulated in the impugned order.

(iii) Tamil version of the Arrest Memo as against English version is at variance. It is stated that in the English version of the arrest memo it is indicated that the information was communicated to the brother of the detainee via a mobile phone, while in the tamil version, there is no mention of the fact that the information was given via mobile phone.

(iv) Lastly, a copy of the remand order was also not furnished. The record shows that notice in the petition was issued on 19.07.2017.

2.1. The State, thereafter, has been given several opportunities to file a counter affidavit, despite opportunities, counter affidavit has not been filed.

3.Mr.Bharatha Chakravarthi, learned Public Prosecutor (Puducherry) resists the petition based on the record. We put to the learned Public Prosecutor (Puducherry) as to whether copy of the bail petition and remand order was furnished to the

detenue. The learned Public Prosecutor (Puducherry) in his usual fairness and condour concedes that copy of the bail petition and remand order were not furnished to the detenue. Therefore, on this short ground alone, according to us, the impugned order needs to be quashed.

3.1. However, we note that the impugned order also does not give the status of the bail petition that the detenue is appears to have filed in the subject case i.e., Cr.No.105 of 2017.

4. Furthermore, we note that even though the detenue was arrested on 16.06.2017, the detention order was passed after more than ten (10) days i.e., on 28.06.2017. There is clearly unexplained delay in passing the detention order.

5. Thus, having regard to the aforesaid, we are inclined to quash the detention order as indicated above. It is so ordered.

7. In the result, the Habeas Corpus Petition is allowed. The Order of detention in No.05/DM/RO/D2/PPASAA/2017 dated 28.06.2017, passed by the second respondent is set aside. The detenue, namely, Thiru. Nithiyanandham S/o Krishnaraj aged about 37 years, is directed to be released forthwith unless his custody is required in connection with another case.

8. Consequently, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ggs/pam

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To

1. The Secretary to Government
Home Department,
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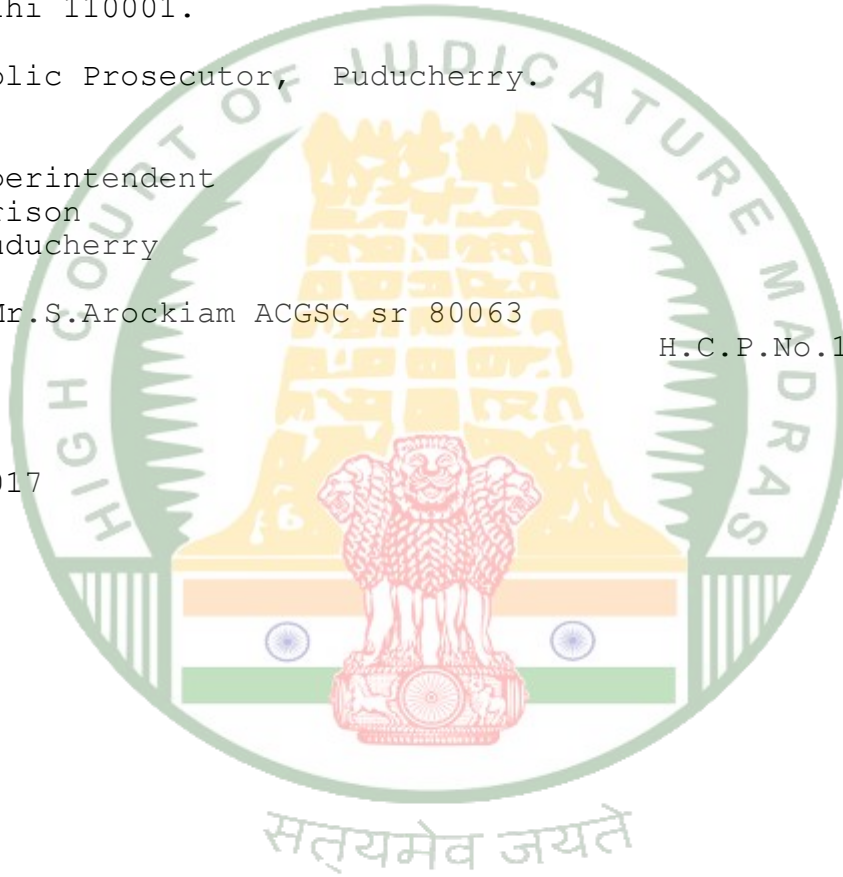
4.The Public Prosecutor, Puducherry.

5. The Superintendent
Central Prison
Kalapet Puducherry

+1 cc to Mr.S.Arockiam ACGSC sr 80063

H.C.P.No.1262 of 2017

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