

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2017

Coram

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

H.C.P.No.1343 of 2017
and Crl.M.P.No.11481 of 2017

Revathy

... Petitioner

Vs.

1.State of Tamil Nadu
Rep. By The Secretary to the Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

2.The District Collector & District Magistrate
Cuddalore District,
Cuddalore.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed in C3/D.O/39/2017 dated on 03.07.2017 passed by the 2nd respondent and set aside the same and directing the respondents to produce the petitioner by name Sivamani, S/o.Ramu, aged about 34 years before this Court now confined in Central Prison, Cuddalore set him at liberty.

For Petitioner : Mr.S.Krishnamoorthy

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

Addl. Public Prosecutor.

ORDER

(Order of the Court was made by **N.SATHISH KUMAR, J**)

The petitioner is the wife of the detenu, namely, Sivamani, Son of Ramu, male, aged about 34 years. The detenu has been detained by the second respondent by his order in C3/D.O/39/2017 dated on 03.07.2017, holding him to be a "Sand Offender", as contemplated under 2(gg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner would submit that the Detaining Authority by relying on the first adverse case registered in Crime No.50/2017 on the file of the Kadampuliyur Town Police Station for the offences under Sections 430 and 379 IPC, in which the detenu has been

released on bail by the learned Principal Sessions Judge, Cuddalore on 06.03.2017, has come to the conclusion that there is real possibility of the detenu coming out on bail. However, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind.

4.1. The learned counsel for the petitioner has also brought to our notice to the judgment of the Supreme Court in the case of **Lahu Shrirang Gatkal Vs. State of Maharashtra and othres, 2017 AIAR (Criminal) 845.**

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. As per the judgment of the Supreme Court in the case of **Lahu Shrirang Gatkal Vs. State of Maharashtra and othres**, the failure to mention the period of detention would impregnate the detention order with illegality. The Supreme Court in the aforementioned case, was considering the provisions of Section 3(1) of Maharashtra Prevention of dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers

and persons Engaged in Balck Marketing of Essential Commodities Act, 1981 (in short “Maharashtra Act”) and also Section 3 of Tamil Nadu Prevention of dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Sluk Grabbers and Video Pirates Act, 1982 (in short “Tamil Nadu Act”). The proviso to both Section 3 of Maharashtra Act and the Tamil Nadu Act, requires the State Government, in the first instance to indicate the period of detention. As per Maharashtra Act, the period of detention cannot exceed six (6) months, whereas under the Tamil Nadu Act, the period of detention cannot exceed three (3) months. However, under both Acts, the State Government has been given the power to amend such order and extend the period of detention provided in the order. The extension order, though, both under the Maharashtra Act and the Tamil Nadu Act cannot extend a period of three months at any one time.

7. The important thing to be noticed, is that, if, an order of detention is passed by an Officer referred to in Sub-section (2) of Section 3, he is required to report the fact to the State Government together with the grounds, on which, the order has been made, and indicate therein such other particulars, as, in his opinion, have a bearing on the matter.

7.1. Sub-section (3) of Section 3 further, goes on to provide that no such

order shall remain in force for a period of twelve (12) days, unless, in the meantime, it has received the approval of the State Government.

7.2. On a perusal of the detention order, we find that no period of detention has been mentioned. Having said so, the detention order has been passed by the District Collector and District Magistrate, who is one of the Officers, referred to in sub-section (2) of Section 3. Therefore, in terms of Sub-section (3) of Section 3, as is indicated in the detention order itself, it was to remain in force for a period of twelve (12) days, and was, necessarily, required to be backed by an approval of the State Government.

7.3. The detention order, clearly, provides that it has been approved by the State Government. The proviso to Sub-section (2) of Section 3, on which reliance is placed by the counsel for the petitioner, in support of his argument that because the period of detention is not provided, it is bad in law, in our view, may not get attracted, where, the officer, who passed the order is, one, who is referred to in Sub-section (2) of Section 3.

7.4. The proviso refers to the State Government and not the officer referred to in sub-section (2) of Section 3.

7.5. The judgement of the Supreme Court, relied upon by the learned counsel for the petitioner, does not, directly, deal with this aspect of the matter. Therefore, for the moment, we need not rely upon the judgement to examine the sustainability of the detention order.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O/39/2017 dated on 03.07.2017, passed by the second respondent is set aside. The detenu, namely, Sivamani, Son of Ramu, male, aged about 34 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. Consequently, the pending application shall stand closed.

9. The State Government will take due notice to the ratio of the judgment of the Supreme Court in *Lahu Shrirang Gatkal Vs. State of Maharashtra and others* and bear in mind the provisions of Section 3 of the Tamil Nadu Act while passing the detention order henceforth.

(R.S.A., J.) (N.S.K., J.)
12.10.2017

Index : yes/no

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Note: Issue order copy today

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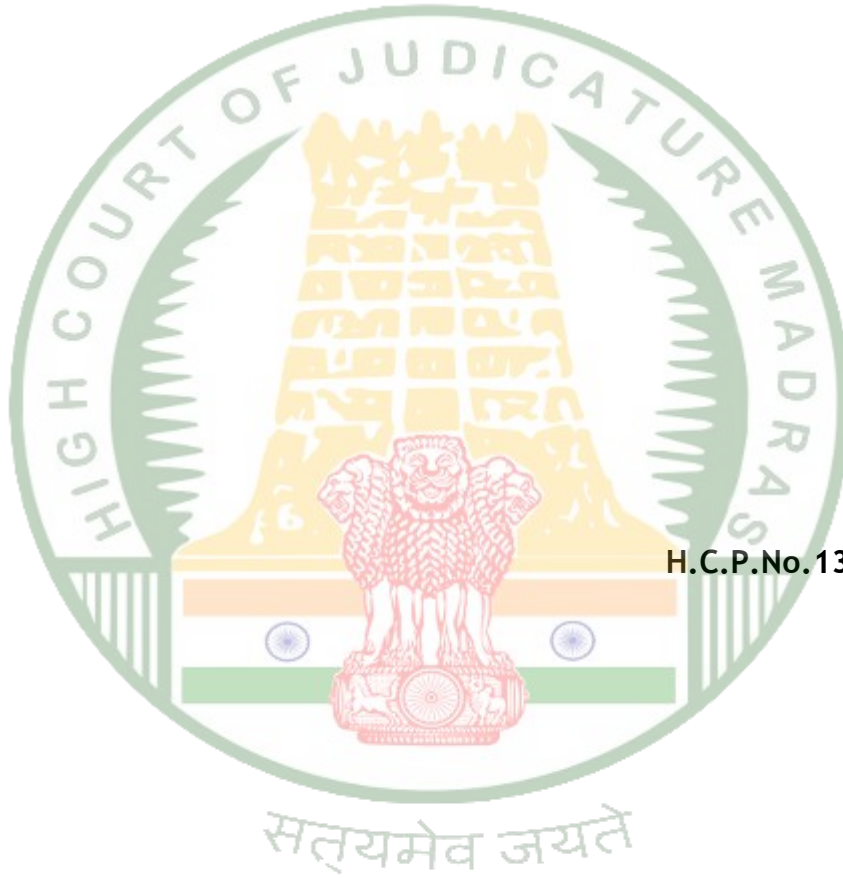
- 1.The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.
- 2.The Joint Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.
- 3.The District Collector & District Magistrate
Cuddalore District,
Cuddalore.
- 4.The Superintendent,
Central Prison,
Cuddalore.
(In duplicate for communication to the detenu)
- 6.The Public Prosecutor,
Madras High Court,
Chennai.



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

vsm



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