

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2017

Coram

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

H.C.P.No.1409 of 2017

A.Noorjakhan

... Petitioner/Wife  
of the Detenu

Vs.

1. State of Tamilnadu,  
Rep. By The Secretary,  
Home, Prohibition and Excise Dept.,  
Fort St. George, Chennai 600 009.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling upon the production of the records relating to the detention order in Memo No.370/BCDFGISSSV/2017 dated 23.06.2017 passed by the second respondent and set aside the same and direct the respondents to produce the petitioner's husband Aman Basha @ Aman Bai, S/o.Jany Basha, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.D.Gopi Krishnan  
for M/s.M.Shankar

For Respondents : Mr.V.M.R.Rajentran,  
Additional Public Prosecutor

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O R D E R

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

The petitioner is the wife of the detenu , namely, Aman Basha @ Aman Bai, Son of Jany Basha, male aged about 61 years. The detenu has been detained by the second respondent by his order in No.370/BCDFGISSSV/2017 dated 23.06.2017, holding him to be a "Goonda", as contemplated under 2(f) 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. The learned counsel for the petitioner made only one submission that though the detention order proceeds to state that the detenu is likely to come out on bail relying upon a similar case wherein bail has been granted by the higher Courts, admittedly the bail application said to have been filed by the detenu was still pending at the time of passing the detention order, which exhibits the non-application of mind by the detaining authority.

4. Though notice was taken as far back as on 02.08.2017, no counter-affidavit has been filed to date. The learned Additional Public Prosecutor 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.

5. On a perusal of the impugned order of detention, we find that the Detaining Authority has passed the impugned order without application of mind. Admittedly, the bail application filed by the detenu in Crime No.932 of 2017 (ground case), is pending. The only reason that the detention order has been passed by the Detaining Authority is that in a similar case, i.e. Crime No.656 of 2016, bail has been granted. According to us, that is not a good enough reason to infer that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Therefore, on this ground, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.370/BCDFGISSSV/2017 dated 23.06.2017 passed by the second respondent is set aside. The detenu, namely, Aman Basha @ Aman Bai, Son of Jany Basha, male aged about 61 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 V)

//True Copy//

Sub Assistant Registrar

sra

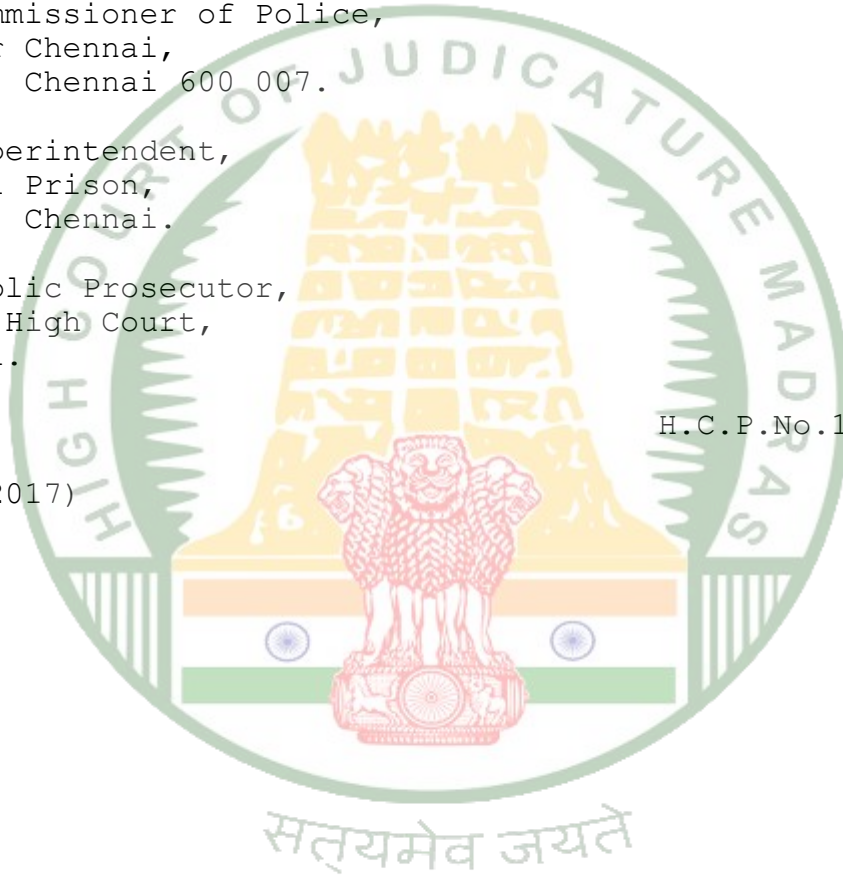
To

1. The Secretary to Government,  
Home, Prohibition and Excise Dept.,  
Fort St. George, Chennai-9.
2. The Joint Secretary to Government,  
Public(Law & Order),  
Fort Saint George, Chennai - 9.
3. The Commissioner of Police,  
Greater Chennai,  
Vepery, Chennai 600 007.
4. The Superintendent,  
Central Prison,  
Puzhal, Chennai.
5. The Public Prosecutor,  
Madras High Court,  
Chennai.

H.C.P.No.1409 of 2017

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