

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2017

CORAM

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

H.C.P.No.1417 of 2017

Lailathul Kathur

Petitioner

Vs.

1. The State of Tamil Nadu
rep.by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai -600 009

2. The Commissioner of Police
Greater Chennai
Chennai – 600 007

3. The Inspector of Police,
S-11, Tambaram Police Station
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to call for the records of the 2nd respondent herein in BCDFGISSV No.441 of 2017 dated 21.07.2017 quash the same and direct the 3rd respondent herein to produce the body of the detenu, Abdhul Raheem @ Periya Abdhul, son of Mohammed Iqbal confined in Central Prison, Puzhal and set him at liberty

For Petitioner : Ms.A.Ajimath Begum

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, i.e.,Abdhul Raheem@ Periya Abdhul, son of Mohammed Iqbal, Male, aged about 32 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.441 of 2017, dated 21.07.2017, holding him to be a "Goonda", as contemplated under Section 2(3) 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 bail application filed by the petitioner in Cr.No.1206 of 2017 was dismissed. Thereafter, the detenu has not filed any bail application. However, the detaining authority by relying on a similar case has come to the conclusion that there is real possibility of the detenu coming out on bail.

5. Per contra, 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.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining

authority in passing the order. Admittedly, in Crime No. 1206 of 2017, no fresh bail application has been filed so far. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere *ipse dixit* and that would vitiate the order of detention. It is a trite law that when no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. Further, the facts involved in the case relied on by the detaining authority as a similar case are totally different. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.441 2017, dated 21.07.2017, passed by the second respondent is set aside. The detenu, i.e., Abdhul Raheem @ Periya Abdhul, aged about 32 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.

[R.S.A.J.] [N.S.K.J.]
26.10.2017

Note to office:

Issue copy by today itself

Communicate the order to the Jail Superintendent via Fax

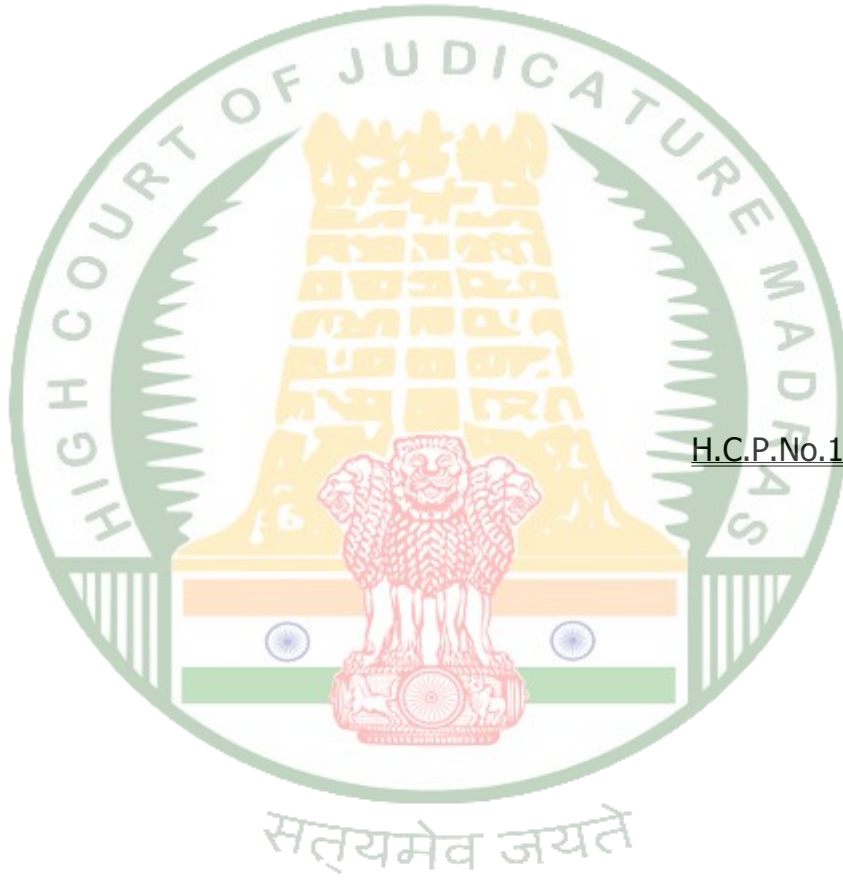
ga

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai -600 009
2. The Commissioner of Police
Greater Chennai
Chennai – 600 007
3. The Inspector of Police,
S-11, Tambaram Police Station
Chennai.
3. Jail Superintendent, Central Prison, Puzhal, Chennai
4. The Joint Secretary,
Public Law and Order Department
Fort St.George, Chennai
5. The Public Prosecutor
High Court, Madras.

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

ga



H.C.P.No.1417 of 2017

WEB COPY

26.10.2017