

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1501 of 2017

Suresh @ Market Suresh
now confined in Central Prison, Puzhal, Chennai ... Petitioner

-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.

2.State rep. by
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, to call for the entire records relating to the detention under Act 14 of 1982 vide Detention Order dated 06.07.2017, on the file of the second respondent herein made in proceedings No.BCDFGISSSV No.397/2017 and quash the same as illegal and consequently direct the respondents herein to produce the detenu Suresh @ Market Suresh S/o.Muthu, male, aged 38 years before this Court and set him at liberty.

For Petitioner : Mr.A.Vijaya Sankar

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

WEB COPY
O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

1. The petitioner Suresh @ Market Suresh, Male, aged about 38 years. He has been detained by the second respondent by his order in No.BCDFGISSSV No.397/2017 dated 06.07.2017, holding him to be a "Goonda", as contemplated under Section 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. 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 for the petitioner would submit that the detaining authority has failed to consider in para 4 of the Grounds of Detention with regard to imminent possibility of coming out on bail. He would further submit that the bail petition of the detainee is pending and without waiting for the result of the bail petition the detention order was passed which will vitiate subjective satisfaction. The learned counsel would also submit that the detention order was not approved and confirmed in time. Further, the papers were not placed before the Advisory Board in time nor was it considered by the Advisory Board within the time stipulated under the Act XIV of 1982. This would vitiate the order of detention. The learned counsel therefore submits that from the above, it is clearly proved that the detention order was passed by the detaining authority non application of mind. Hence, the same may be quashed.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments 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 bail petition is pending in Cr.No.2012 of 2017 before the XXIII M.M. Court, Saidapet, in CrI.M.P.No.1227/2017. The detainee has not moved any bail application in respect of Cr.Nos.1009/2017, 2013/2017, and 1179/2017. Whereas the detaining authority considered the similar bail application filed by other accused in Cr.No.1179 of 2017 and inferred that the steps may be taken by the relatives of the detainee to get the bail order. Such a conclusion is merely non application of mind on the part of the detaining authority. When the bail application is dismissed and no fresh bail application has been filed so far, 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. It is pertinent to note that the detenu was arrested on 7.5.2017 in the ground case on 6.7.2017 after two months the detention order was passed. The delay is remained unexplained. Further notice was issued on 7.8.2017 to the respondents. But they have not filed any counter affidavit. All these facts would clearly shows that there is a non application of mind on the part of the detaining authority. 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 BCDFGISSV No.397/2017, dated 06.07.2017, passed by the second respondent is set aside. The detenu, i.e., Tr. Suresh @ Market Suresh male, aged about 38 years S/o Muthu, 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

To

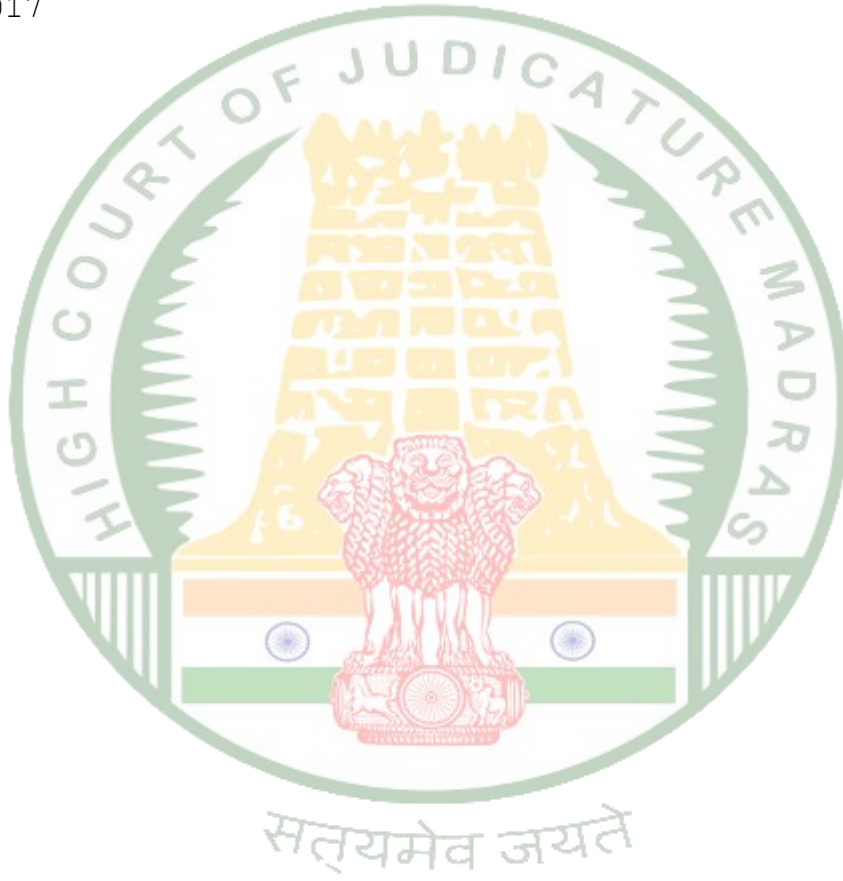
1. The Principal Secretary to the Government
Home and Prohibition and Excise Department
Chennai-09.
2. The Joint Secretary to Government
Public, Law and Order Department,
Fort St.George,
Chennai-09
3. The Commissioner of Police,
Greater Chennai, Chennai.

4. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

5. The Public Prosecutor
High Court, Madras.

H.C.P.No.1501 of 2017

aa31/10/2017



WEB COPY