

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2017

Coram

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

H.C.P.No.1537 of 2017
and CrI.M.P.No.13526 of 2017

Gouse Basha

... Petitioner

Vs.

1.State of Tamil Nadu

Rep by its Secretary to Government,
Home Prohibition and Excise Department
Secretariat, Chennai - 600 009.

2.The Commissioner of Police

Greater Chennai Police
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 petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 25.07.2017 on the file of the second respondent herein made in proceedings No.452/BCDFGISSSV/2017 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's brother namely Musthafa, Son of Basha, aged 26 years before this Court and set the petitioner's brother at liberty from detention, now petitioner's brother detained at Central Prison - II, Puzhal, Chennai - 600 066.

For Petitioner : Mr.C.C.Chellappan

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

Addl. Public Prosecutor.

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O R D E R

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

Crl.M.P.No.13526 of 2017
in H.C.P.No.1537 of 2017

1. This is an application for early hearing of H.C.P.No.1537 of 2017. In the main H.C.P., no fixed date has been given. The predecessor Bench on 21.08.2017, after issuing notice in the matter, granted time to the respondents to file a counter affidavit and directed that the matter be posted before it by "27.11.2017".

2. In these circumstances, we are inclined to allow the petition, given the fact that the petitioner has been in detention, since 19.07.2017. It is ordered accordingly.

H.C.P.No.1537 of 2017

3. Mr.V.M.R.Rajentran, learned Additional Public Prosecutor, submits that though no counter affidavit has been filed, despite opportunities having been granted by this Court, vide order dated 21.08.2017, he will have no difficulty in arguing the matter, based on record.

4. This is a petition, which lays challenge to the detention order dated 25.07.2017. In the impugned order, as against the detenu one adverse case has been noted. This case has been registered as : Crime No.354 of 2016. In respect of this case, the detenu has been booked under Sections 51, 52(A), 63,65 r/w 68(A) of Copy Right Act 1957 and 292(2)(a) IPC.

5. In respect of the subject case, the detenu has been booked for the same offences.

6. The learned counsel for the petitioner submits that the order passed by the Detaining Authority is flawed for the reason that the apprehension expressed by the Detaining Authority that the detenu is likely to be released, is misplaced. For this purpose, our attention has been drawn to paragraph No.4 of the impugned order.

7. We have perused the impugned order. The Detaining Authority, in respect of the subject case (Crime No.239 of 2017) has noted that the detenu had moved a bail application before XI Metropolitan Magistrate Court, Chennai, which was dismissed. The order also notes that the detenu's relatives may file an

application for enlargement of the detenu on bail. In addition to this, the Detaining Authority also notes that, in a similar case, registered for the same offences, bail was granted by III Metropolitan Magistrate, George Town, Chennai. Based on these observations, the Detaining Authority has expressed an apprehension that the detenu is likely to be enlarged on bail.

8. According to us, there is lack of application of mind. Even according to the Detaining Authority, the detenu's application in the subject case i.e., Crime No.239 of 2017 was dismissed. As regards, bail having been granted in a similar case that can have no bearing on the detenu's case, since, bail in the similar case was granted in 2015, which is two (2) years prior to the date, when the detenu was arrested.

9. Furthermore, the fact that the relatives of the detenu may move for bail, in our opinion, cannot be a ground, at least, at this juncture to detain the detenu.

10. For the foregoing reasons, we are inclined to quash the impugned order. It is ordered accordingly.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.452/BCDFGISSSV/2017, dated 25.07.2017, passed by the second respondent is set aside. The detenu, namely, Musthafa, S/o.Basha, male, aged about 26 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 IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Department of Prohibition and Excise (Home)
Home Prohibition and Excise Department
Secretariat, Chennai - 600 009.

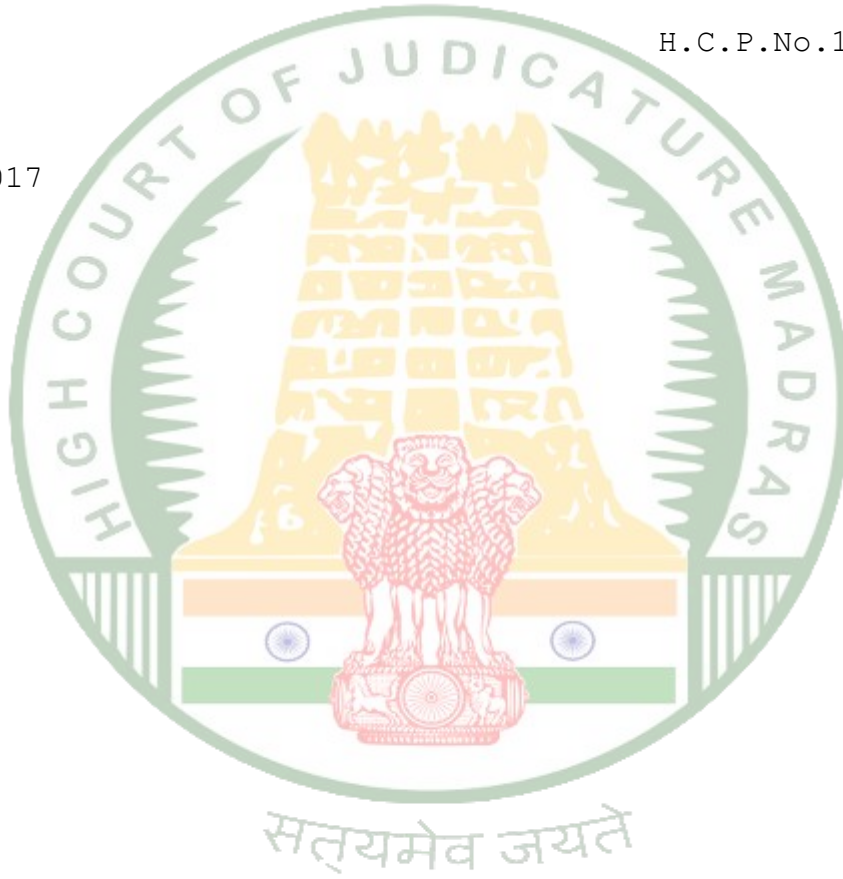
2.The Commissioner of Police
Greater Chennai Police
Vepery, Chennai - 600 007.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1537 of 2017

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