

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2017

Coram

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

H.C.P.No.1580 of 2017

Anusuya

... Petitioner

Vs.

1.The Secretary to Government,
Government of India
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi.

2.The Secretary to Government,
Rajnivas, Puducherry.

3.The District Magistrate
I Floor, Revenue Complex,
Saram, Puducherry - 650 013.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in No.12/DM/RO/D2/PPASAA/2017, dated 31.07.2017 passed by the 3rd respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and set aside the same and direct the respondent to produce the petitioner's son Sivaraman @ Sivaramakrishnan, S/o.Muthaiyan, aged about 25 years the detenu, now confined in Central Prison, Kalapet, Puducherry before this Court and set the petitioner's husband Sivaraman @

Sivaramakrishnan, S/o.Muthaiyan aged about 37 years the detenu herein at liberty.

For Petitioner : Mr.U.Yuvaraj

For Respondents : Mr.Arokiam, for R2 & R3

Mr.Bharatha Chakravarthi,

Public Prosecutor for R1 .

ORDER

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

1. This is a petition filed against the detention order dated 31.07.2017.

2. In the impugned order, four (4) adverse cases have been noticed qua the detenu. There are numbered as : Crime Nos.96 of 2015; 402 of 2016; 23 of 2016; and 95 of 2016.

2.1. Insofar as the subject case is concerned, it is registered as : Crime No.40 of 2017.

2.2. The record further shows that the detenu was arrested on 25.04.2017.

3. A perusal of the impugned order would also show that the petitioner had filed a bail petition (Crl.M.P.No.1511 of 2017). However, the impugned order does not advert to the fact as to whether or not, the bail petition was

allowed or was pending on the given date.

4. This apart, counsel for the petitioner says that in this case, the co-detenus, vide order of this Court dated 10.11.2017, passed in H.C.P.No.1599 of 2017 and via order dated 10.11.2017, passed in H.C.P.No.1598 of 2017, have been released.

5. The learned Public Prosecutor, on the other hand, relies on the impugned order on record, to resist the petition. To be noted, no counter affidavit has been filed on behalf of the Government of Puducherry.

6. We have heard the contentions of the counsel for the petitioner and the learned Public Prosecutor and also perused the records. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, the detenu was arrested on 25.04.2017, while the impugned detention order was passed on 31.07.2017. There is an unexplained delay of more than three (3) months in passing of the impugned order.

(ii) Second, the impugned order does not give the status of the bail petition moved by the detenu. The Detaining Authority, without advertent to this aspect of the matter, has come to the conclusion that the petitioner is likely to be enlarged on bail. According to us, since no basis is given, this

conclusion appears to be flawed.

(iii) Third, as indicated above, no counter affidavit has been filed qua the petition. Consequently, the assertions made in the petition have remained uncontroverted.

7. For all these reasons, as indicated above, we are inclined to quash the impugned order. It is ordered accordingly.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.12/DM/RO/D2/PPASAA/2017, dated 31.07.2017, passed by the third respondent is set aside. The detenu, namely, Sivaraman @ Sivaramakrishnan, S/o.Muthaiyan, male, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with another 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.)
20.11.2017

Index : yes/no
vsm

Note: Issue order copy today

To

- 1.The Secretary to Government,
Ministry of Home Affairs,
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North Block, New Delhi.
- 2.The Secretary to Government,
Rajnivas, Puducherry.
- 3.The District Magistrate
I Floor, Revenue Complex,
Saram, Puducherry - 650 013
- 4.The Superintendent,
Central Prison,
Kalapet, Puducherry.
- 5.The Public Prosecutor (Puducherry),
Madras High Court,
Chennai.



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

vsm



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