

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1588 of 2017

Sulthana

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

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

... 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 Memo No.450/BCDFGISSSV/ 2017, dated 25.07.2017 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Abdul Vaseem @ Babla s/o Abdul Hameed the detainee now confined in Central Prison, Puzhal, Chennai before the Hon'ble Court and set the petitioner's son Abdul Vaseem @ Babla s/o Abdul Hameed aged about 23 years the detainee herein at liberty.

For Petitioner : Mr.Shanmuga Sundaram
for M/s.M.Kaveri Selvam

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

O R D E R

[Order of the Court was made by RAJIV SHAKDHER, J.]

1.This is a petition, which is, directed against the

detention order, dated 25.07.2017. A perusal of the detention order, would show, that there are five adverse cases, noted qua, the detenu.

1.1.These being, Crime No.1525 of 2015: Crime No.1526 of 2015: Crime No.1281 of 2017: Crime No.875 of 2017 and Crime No.1290 of 2017.

2.In so far as the subject case is concerned, the same has been registered as Crime No.1291 of 2017. Qua this case, the detenu has been booked, under Sections 294(b), 341, 336, 392, 397, 427 and 506(ii) of IPC.

2.1.The record, also shows, that the detenu was arrested on 17.06.2017.

3.We have perused the record and also heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

4.We are of the view, that the impugned order, cannot be sustained, for the following reasons:

(i)First, even though, the detenu was arrested on 17.06.2017, the impugned order was passed on 25.07.2017. Notice in this petition was issued on 28.08.2017, despite which, counter affidavit has not been filed by the State. Consequently, the delay, in passing the detention order, remains un-explained.

(ii) Second, a perusal of paragraph no.4 of the impugned order, would show that, on the date, when the impugned order was passed, bail petitions filed in Crime Nos.1281 of 2017, 1290 of 2017 and 1291 of 2017, were pending.

(iii) Third, the only reason, the detaining Authority has given, to reach the conclusion, that there is likelihood of the detenu, being enlarged on bail, is that, in a similar case, pertaining to 2016, bail was granted. Pertinently, the date of the bail order, has not been mentioned, by the detaining Authority, though, the bail petition number, has been adverted to. According to us, the "similar case" yardstick adopted by the detaining Authority is flawed. As noted above, even according to the detaining Authority, bail petitions filed by the detenu, were pending.

5.As indicated by us, in several orders earlier, Courts do not grant bail, based on parity of provisions, under which, accused are booked, but by looking to various factors, including, the gravity of the offence; ability of the accused to suborn witnesses ; and the possibility of the detenu fleeing from justice.

6.As indicated above, we are inclined to quash the detention

order. It is directed accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.450/BCDFGISSSV/ 2017, dated 25.07.2017, passed by the second respondent is set aside. The detenu, namely, Abdul Vaseem, alias, Babla son of Abdul Hameed, aged about 23 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.

8. Before we close, we wish to say that in our order dated 04.12.2017,

we had, required the State, to place on record, measures to counsel young offenders.

8.1. In this case, the detenu, who is only 23 years of age, has already been booked, in five adverse cases.

8.2. The learned Additional Public Prosecutor, has, some how failed, to look at this aspect of the matter.

8.3. The State, will place on record, an affidavit of the Director General of Police, in this behalf.

8.4. List for compliance, on this score, on 21.12.2017.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

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

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

4.The Joint Secretary,
Public (Law & Order) Department,
Seretariat, Chennai.

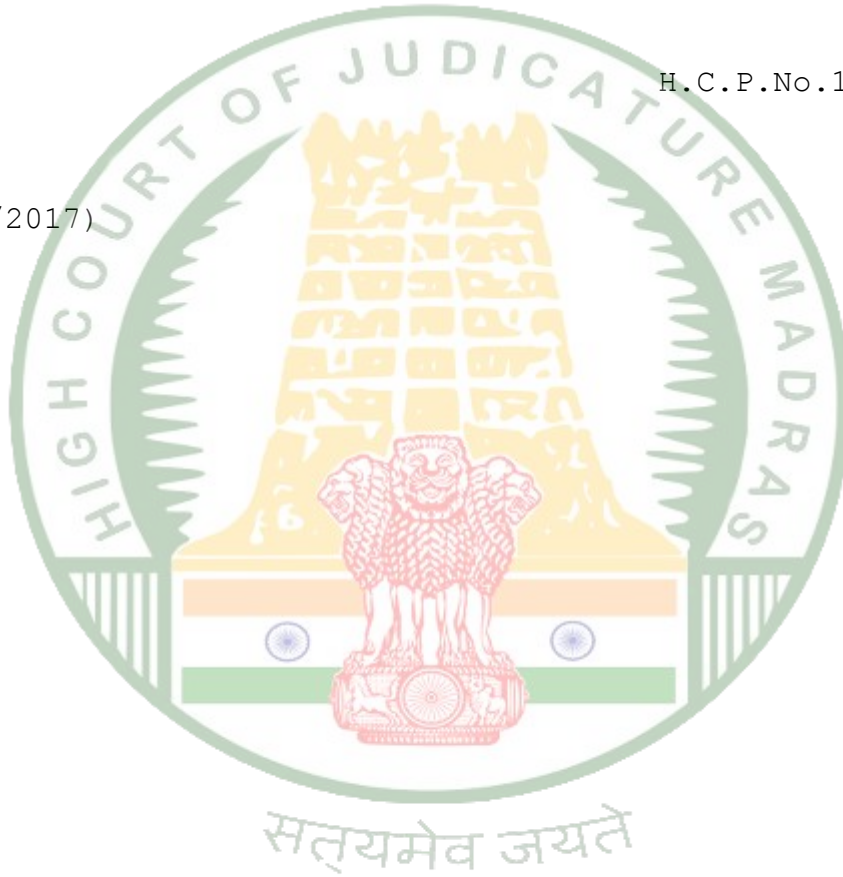
5.The Additional Public Prosecutor,
Madras High Court,
Madras.

6.The Section Officer,
Criminal Section,
High Court Madras

H.C.P.No.1588 of 2017

SSV(CO)

RRK(11/12/2017)



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