

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN  
and  
THE HONOURABLE MR.JUSTICE S. BASKARAN  
H.C.P.No. 161 of 2017

V. Asha Rani

..Petitioner

Vs.

1. The Secretary to the Government,  
Home, Prohibition & Excise  
Department,  
Secretariat, Chennai - 600 009.

2. District Collector &  
District Magistrate,  
Vellore District,  
Vellore 9.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records, in connection with the order of detention passed by the 2<sup>nd</sup> respondent dated 16.01.2017 in C3.D.O.No. 06/2017 against the petitioner's husband Oms @ Vinothkumar, male aged 32 years, S/o. Sankar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner :: Mr.S. Senthilvel

For Respondents:: Mr.V.M.R.Rajentren,  
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.V. MURALIDARAN, J.]

The petitioner, who is the wife of the detenu Oms @ Vinothkumar, S/o Sankar, has come up with this habeas corpus petition, challenging the detention order passed by the 2<sup>nd</sup> respondent, vide proceedings in C3/D.O.No. 06/2017 dated 16.01.2017.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that the Detaining Authority has passed the order of detention for the reason that the bail petition filed by the detenu in CrI.M.P. No. 5181 of 2016 in respect of the ground case is pending and hence, there is imminent possibility of the detenu coming out on bail. According to the learned counsel for the petitioner, by mere pendency of bail application, there cannot be any presumption that the detenu would come out on bail. Therefore, the learned counsel would submit that there is total non-application of mind on the part of the Detaining Authority in passing the order of detention and hence, the same is liable to be set aside.

4. Heard the learned Additional Public prosecutor, who would submit that the order of detention has been passed on cogent and sufficient materials and it does not warrant any interference, at the instance of the petitioner.

5. We have considered the rival submissions. As rightly contended by the learned counsel for the petitioner, when a bail application is pending, it cannot be presumed that the detenu would come out on bail and mere pendency of the bail application would not enable the Detaining Authority to conclude that the Court would certainly grant bail to the detenu. It is nothing but pre-judging the matter. There are no cogent materials available on record or pointed out by the detaining authority in the grounds of detention reflecting the subjective satisfaction of the Detaining Authority to the effect that the detenu was likely to be released on bail and as such, the detention order is vitiated and the same is liable to be set aside.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 16.01.2017, passed by the 2<sup>nd</sup> respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-  
Assistant Registrar

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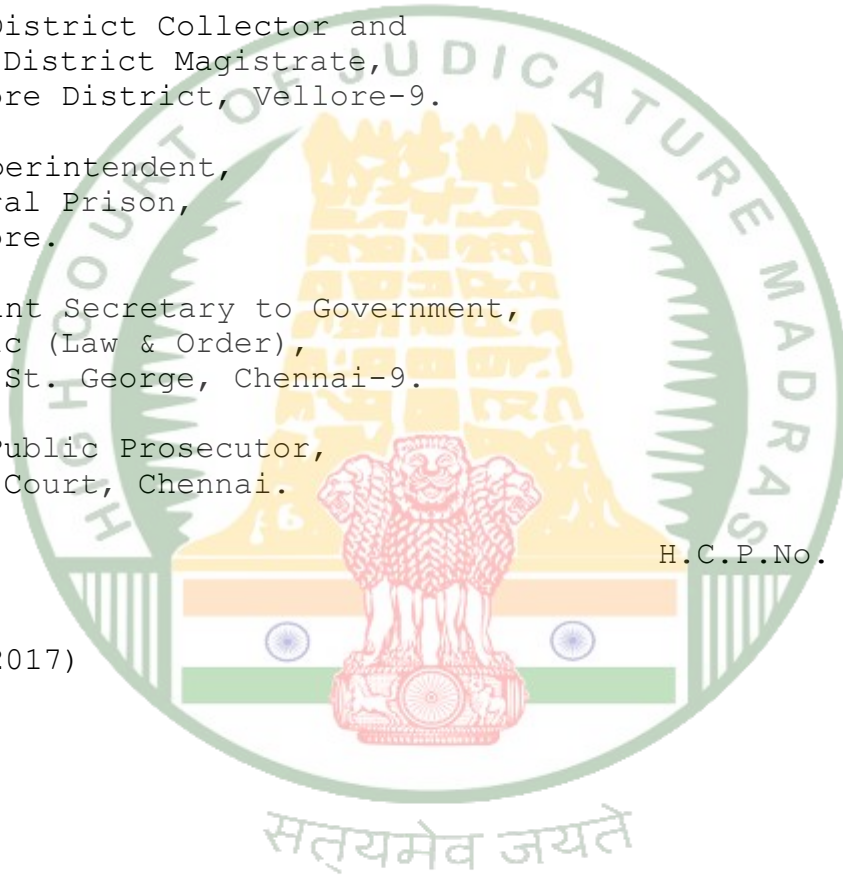
Sub Assistant Registrar

To

- 1) The Principal Secretary to Government,  
Home, Prohibition & Excise  
Department,  
Secretariat,  
Chennai - 600 009.
2. The District Collector and  
District Magistrate,  
Vellore District, Vellore-9.
3. The Superintendent,  
Central Prison,  
Vellore.
4. The Joint Secretary to Government,  
Public (Law & Order),  
Fort St. George, Chennai-9.
5. The Public Prosecutor,  
High Court, Chennai.

H.C.P.No. 161 of 2017

NRI (CO)  
RS(19/06/2017)



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