

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No. 1678 of 2017

Thamina ... Petitioner/Wife of the detenue

-vs-

1.State of Tamilnadu,
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, to call for the records relating to the detention order in Memo No.480/BCDFGISSSV/2017, dated 09.08.2017 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 husband AJEEZ S/o. NOOR MOHAMED aged about 35 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's husband AJEEZ S/o. NOOR MOHAMED aged about 35 years the detenue herein at liberty.

For Petitioner : Mr.D.Gopikrishnan for
Mr.T.V.Somasumdaram

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

O R D E R

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

1.This is a petition seeks to challenge the detention order dated 09.08.2017.

2.Notice in this petition was issued on 08.09.2017. Despite opportunities, being given to the State, no counter affidavit has been filed to date. Therefore, the assertions made in the petition have remain un-controverted.

3. In the detention order qua the detenu, three adverse cases have been noted. In all three adverse cases, it is alleged that the detenu has offended the provisions of Section 379 of the IPC. Three adverse cases are numbered as : Crime No.504 of 2017; Crime No.729 of 2017 ; and Crime No.730 of 2017.

4. Insofar the subject case is concerned, it is registered as Crime No.1012 of 2017. In the subject case, the detenu was arrested on 18.07.2017. As indicated above, the impugned order was passed on 09.08.2017. There is clear delay in passing the detention order.

5. This apart, we note that the detenu had moved for bail in Crime No.1012 of 2017, which was declined on 28.07.2017. It appears that, thereafter, the detenu moved another application (CrlMP No.11586 of 2017) which is pending adjudication.

6. In the impugned order, it is noted that in a similar case, bail was granted. The date of the order, in which, bail was granted is not noted. However, the bail petition which was numbered as Crl.M.P.No.5852 of 2016 shows that it relates to 2016. Based on these circumstances, the detaining authority has come to the conclusion that the detenu is likely to be enlarged on bail.

7. According to us, this apprehension of the detaining authority is neither real nor imminent. The similar case, which the detaining authority, has relied upon, appears to be related to 2016. While the detenu was arrested on 18.07.2017, the detenu's bail petition has been rejected on 28.07.2017. There is no reason to assume that the pending bail petition would be allowed.

8. Thus, given the aforesaid circumstances and the reasons articulated above, we are inclined to quash the impugned order. It is ordered accordingly.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.480/BCDFGISSSV/2017, dated 09.08.2017, passed by the respondent No.2 is set aside. The detenu, namely, Ajeez, S/o.Noor Mohamed, aged about 35 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 V)

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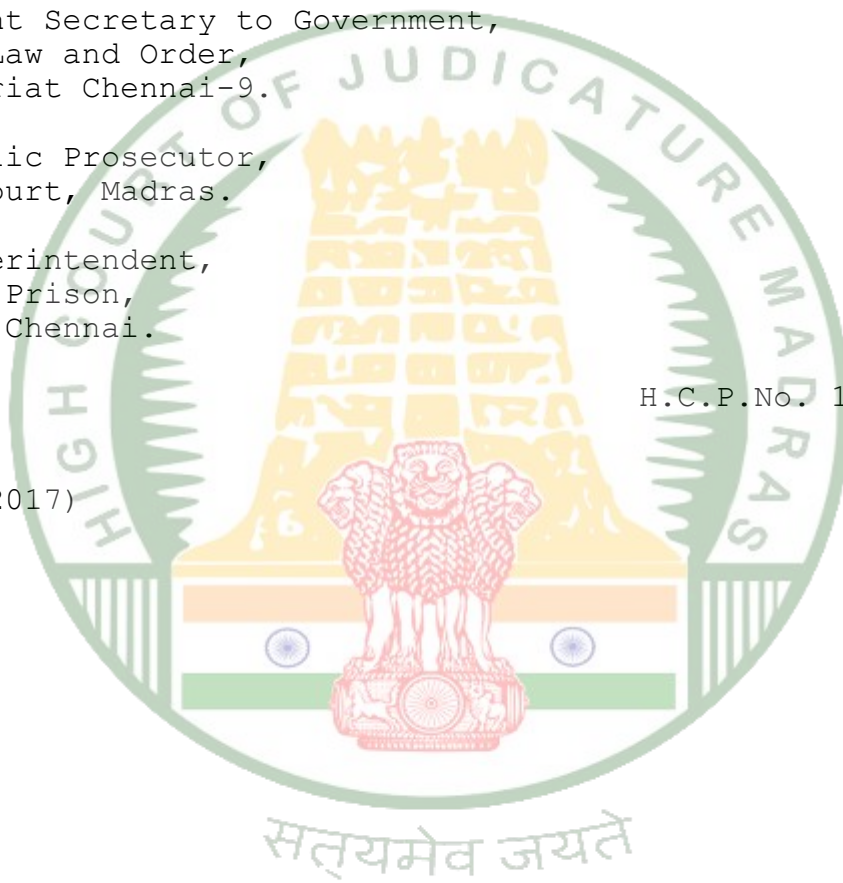
Sub Assistant Registrar

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 Joint Secretary to Government,
Public Law and Order,
Secretariat Chennai-9.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai.

H.C.P.No. 1678 of 2017

GN(07/11/2017)



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