

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1702 of 2017

Purushothaman

... Petitioner

-vs-

1.The State of Puducherry,
Represented by its
Chief Secretary to Government,
Government of Puducherry,
Puducherry State.

2.The District Magistrate cum-
Authorised Officer,
Puducherry - 1,
Puducherry State.

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

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records made in No.17/DM/RO/D2/PPASAA/2017 dated 21.08.2017 on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the detenu, Boobalan, son of Purushothaman, before this Hon'ble Court now confined at Central Prison, Kalapet, Puducherry, and set him at liberty.

For Petitioner :

Mr.R.Sankarasubbu

For Respondents:

Mr.M.R.Thangavel for R1 and R2
Additional Public Prosecutor (P)
Mr.S.Arockiam for R3
CGSC

O R D E R

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

1.This is a petition, filed, to assail the detention order, dated 21.08.2017.

1.1.As against the detenu, six adverse cases have been noted. These being: Crime No.64 of 2013: Crime No.66 of 2013: I.R.No.14 of 2013: Crime No.47 of 2015: I.R.No.03 of 2016 and Crime No.22 of 2017. In so far as the subject case is concerned, it is registered as Crime No.40 of 2017.

1.2.The record shows, that the detenu was arrested on 27.04.2017.

1.3.Furthermore, the detenu stands acquitted in Crime No.64 of 2013 and discharged in two other cases, i.e., I.R.No.14 of 2013 and I.R.No.03 of 2016. In the remaining cases, charge sheet has been filed against the detenu.

2.A perusal of the impugned order, shows that the detaining Authority, appears to have passed the impugned detention order, only on account of the fact that the statutory period, for keeping the detenu, in custody, had expired on 25.07.2017.

2.1.The detaining Authority, apprehending that the detenu, would be enlarged on bail, appears to have passed the impugned detention order.

3.Our attention, has also been drawn, to the fact, that in so far as the co-accused in Crime No.40 of 2017 is concerned, she had also preferred a Habeas Corpus Petition, i.e., H.C.P.No.1598 of 2017, which was allowed on 10.11.2017.

4.Having regard to the aforesaid facts and circumstances, 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 27.04.2017, the impugned detention order was passed on 21.08.2017, that is, after nearly four months. Notice in this petition was issued on 12.09.2017. As a matter of fact, by an order dated 05.12.2017, we had allowed the early hearing application, which is how, the matter has been listed, in Court, today. Despite opportunity being granted to the State, to file a counter affidavit, the counter affidavit is filed, only, today. A perusal of the counter affidavit shows that there is no explanation given therein, qua the delay, which occasioned the passing of the detention order.

(ii) Second, as indicated above, the only reason that the detaining Authority, appears to have passed the detention order, was that the statutory period for keeping the detenu, in custody, had expired. The apprehension was, as it appears, that the detenu would move for bail.

(ii)(a) According to us, the Detaining Authority, by citing this as the reason, took into account an irrelevant factor. The impugned detention order was flawed to that extent.

5. Thus, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.17/DM/RO/D2/PPASAA/2017, dated 21.08.2017, passed by the second respondent is set aside. The detenu, namely, Boobalan, son of Purushothaman, 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Puducherry,
Represented by its
Chief Secretary to Government,
Government of Puducherry,
Puducherry State.

2. The District Magistrate cum-
Authorised Officer,
Puducherry - 1,
Puducherry State.

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

4.The Superintendent,
Central Prison, Kalapet, Puducherry.

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

+1 cc to M/s.R.Sankarasubbu Advocate sr 90332
+1 cc to M/s.S.Arockiam Advocate sr 90313
+1 cc to the Govt Pleader sr 90666

H.C.P.No.1702 of 2017

aa19/12/2017



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