

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.No.1728 of 2017

Rajesh @ Pettai Rajesh

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of Detention passed by the second respondent 21.07.2017 in Memo No.442/BCDFGISSSV/2017 against the detenu Rajesh @ Pettai Rajesh, Male, aged 24 years, S/o Devan, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S. Senthil Vel

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor

ORDER

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

1. This petition seeks to assail the detention order bearing No.442/BCDFGISSSV/2017, dated 21.07.2017. Via this order, the petitioner/ detenu is held to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982.

2. Qua the detenu three (3) adverse cases have been noted. These being : Cr.No.998/2016; Cr.No.639 of 2017; and Cr.No.1042/2017. Insofar as Cr.No.998/2016 is concerned, the detenu has been booked under Sections 341, 324, 307, 302 & 506(ii) IPC @ 147, 148, 341,294(b), 324, 307, 302, 506(ii) and 120(b) of the IPC.

3. In respect of Cr.No.639/2017, the detenu has been booked under Sections 147, 148, 341, 294(b), 307, 336 and 506(ii) IPC and 3 of the TNPPDL Act.

3.1. Likewise, insofar as Cr.No.1042/2017 is concerned, the detenu has been booked under Sections 341, 294(b), 353, 332, 307, 336 and 506(ii) of the IPC.

4. In the subject case, which is registered as Cr.No.1045/2017, the detenu has been booked under Sections 341, 294(b), 323, 397, 307, 427, 336 and 506(ii) of the IPC.

5. A perusal of the impugned order would show that the detenu was arrested on 13.06.2017.

5.1. Pertinently, on the previous date, i.e., 23.11.2017, we had directed the learned Additional Public Prosecutor to inform us as to the stage, which has been reached in Cr.No.998/2016. As noted above, one of the provisions of the IPC, under which, the detenu was booked, in respect of the said Crime Number is Section 302. We are informed, today, by the learned Additional Public Prosecutor that in the said case, the detenu has been acquitted.

6. Learned counsel for the petitioner, given in the aforesaid circumstances, argued that the impugned order cannot be sustained. It is the

counsel's submission that there is not only delay in passing the impugned order, but also at display non-application of mind, as the bail applications, filed by the detenu, were pending, on the date, when, the impugned order was passed.

7. The learned Additional Public Prosecutor, on the other hand, relies upon the impugned order and the record to resist the petition.

8. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor. We have also perused the record of the case.

8.1. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, the detenu was, concededly, arrested on 13.06.2017, whereas, the impugned order was passed on 21.07.2017. Clearly, there has been a delay in passing the impugned order. Notice in this petition was issued as far as back 15.09.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, a perusal of paragraph 4 of the impugned order shows that even though the detenu had filed a bail application in Cr.No.1043/2017, the

same was pending on the date when the impugned order was passed. Insofar as the case in Cr.No.1042/2017 and Cr.No.1045/2017 are concerned, even according to the detaining authority, the detenu had not moved bail applications on the date when the impugned order was passed. The detaining authority, however, has entertained an apprehension that there is a real and imminent possibility of the detenu being enlarged on bail on two grounds: (i) one, that the relatives of the detenu may move for bail ; and (ii) two, that in a similar case, bail was granted, albeit, in 2015. Pertinently, the date of the bail order has not been referred to in the impugned order. The conclusion reached by the detaining authority that there was real and imminent possibility of the detenu being enlarged on bail, based on the factors set out in the impugned order appear to be flawed. Since, bail application was pending in Cr.No.1043/2017 and no bail applications had been moved in Cr.Nos.1042/2017 and 1043/2017, the conclusion reached by the detaining authority with regard to the imminence of the detenu being enlarged on bail, is, in our view, erroneous.

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9. Clearly, the assertions made in the captioned petition remains uncontroverted.

10. Thus, for the foregoing reasons, the detention order is liable to be set aside. It is ordered accordingly.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.442/BCDFGISSSV/2017 dated 21.7.2017 passed by the second respondent is set aside. The detenu, namely, Rajesh @ Pettai Rajesh, Male, aged 24 years, S/o Devan is directed to be released forthwith unless his detention is required in 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.)

28.11.2017

Index : yes/no

sr/gg

Note: Issue copy by today itself

order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To

1. The Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.

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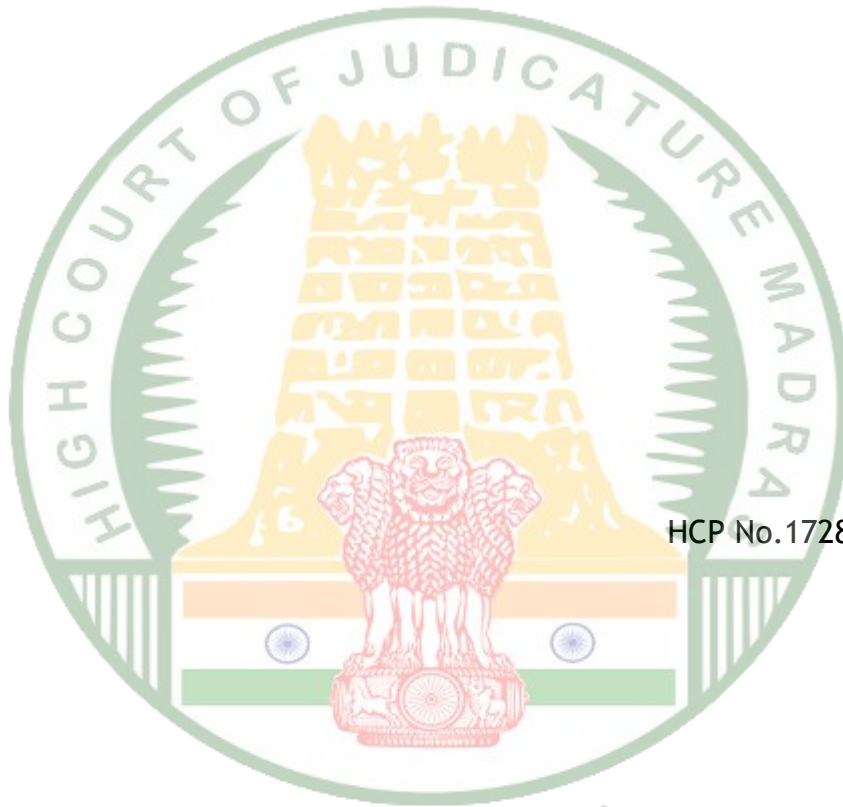
2. The Commissioner of Police,
Greater Chennai
3. The Superintendent of Central Prison,
Puzhal-II,
Chennai
4. The Public Prosecutor,
Madras High Court,
Chennai.



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

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HCP No.1728 of 2017

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28-11-2017

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