

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1736 of 2017

R.Sathya

... Petitioner

Vs.

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

2.The District Collector & District Magistrate
O/o.Collector Office,
Vellore, Vellore - 9.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 06.09.2017 on the file of the second respondent herein made in proceedings Memo C3/D.O.No.91/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely M.Ramesh, S/o.Mani, aged 35 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Vellore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

O R D E R

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

1.This petition seeks to assail the detention order dated 06.09.2017.

2.A perusal of the order would show that there is one (1) adverse case registered against the detenu. This being: Crime

No.256 of 2017. Insofar as the said case is concerned, the detenu has been booked under Sections 379 and 430 of the IPC r/w Section 21(1) of the Mines and Minerals (Development & Regulations) Act 1957 (in short "the 1957 Act")

3. Insofar as the subject case is concerned, the same has been registered as Crime No.257 of 2017. In respect the subject case, the detenu has been booked under Sections 430, 379, 341, 353, 307 and 506(ii) of the IPC r/w Section 21 (1) of the 1957 Act.

3.1. The record shows that the detenu was arrested on 12.08.2017.

4. Furthermore, a perusal of the impugned order would show that in Crime No.257 of 2017, the detenu had file a bail application, which was dismissed on 19.08.2017. The Detaining Authority, however, has come to the conclusion that there was a real and imminent possibility of the detenu being enlarged on bail, based on an order passed in a similar case (Crime No.222/2017).

5. We have perused the impugned order and also heard both the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 12.08.2017, the impugned order was passed only on 06.09.2017. Notice in this petition was issued on 15.09.2017, despite which, no counter affidavit has been filed. Consequently, the delay in passing the impugned order has not been explained.

(ii) Second, concededly, the bail application filed by the detenu stood dismissed on the date of passing of the impugned order. The only reason that the Detaining Authority has come to the conclusion that the detenu may be released on bail, is that in a similar case bail was granted by a concerned Court on 27.07.2017. According to us, this could not have formed the basis for the Detaining Authority to reach a conclusion that there was a real and imminent possibility of the detenu being enlarged on bail. The gravity of the offence, the ability to suborn witnesses, and the likelihood of the detenu keeping away from the long-arm of law would be aspects which the concerned Court would have to factor in before taking a decision whether or not bail should not be granted to an accused. Mere similarity of sections under which another accused is booked cannot be a reason for entertaining an apprehension that the detenu would also be released on bail. In the detenu's case, the record shows that the bail application was, in fact, dismissed.

6. Thus, as indicated above, for the foregoing reasons, we are inclined to quash the impugned order. It is directed accordingly.

7 In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.91/2017, dated 06.09.2017, passed by the second respondent is set aside. The detenu, namely, Ramesh, S/o.Mani, male, aged about 35 years, 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-VI)

//True Copy//

Sub Assistant Registrar

vsm

To

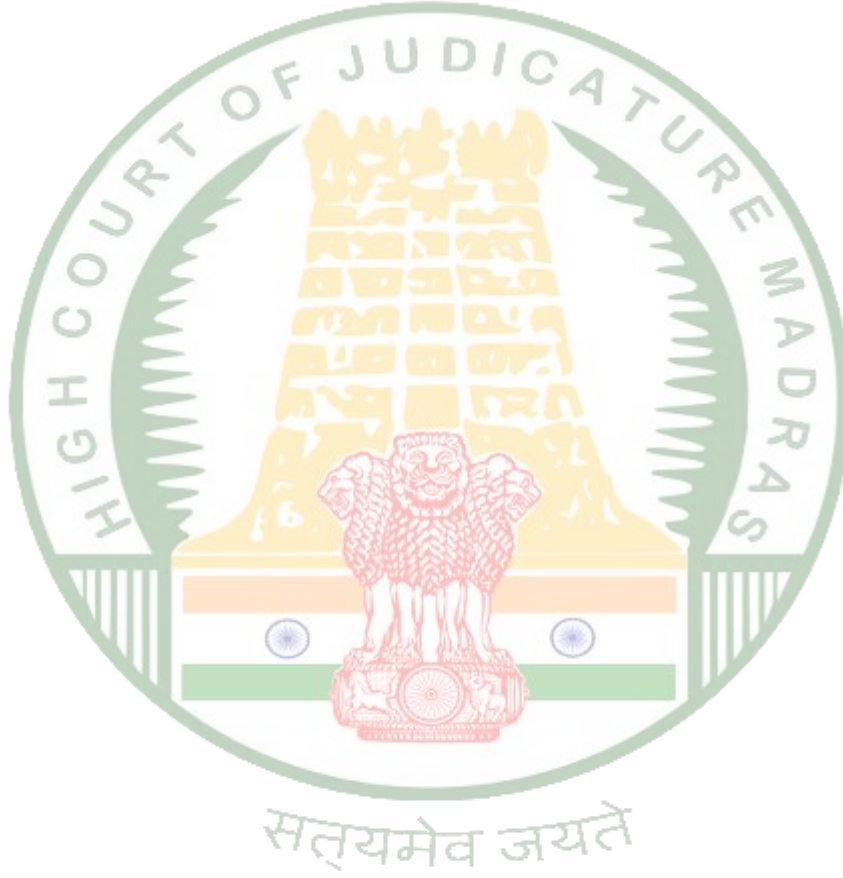
- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector & District Magistrate
O/o.Collector Office,
Vellore, Vellore - 9.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Vellore.
[In duplicate for communication to the detenu]

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

+1cc to Mr.A.BHARATHI Advocate, S.R.No. 85621

H.C.P.No.1736 of 2017

MP2 (CO)
TR(04/12/2017)



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