

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2017

Coram

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

H.C.P.No.1745 of 2017

M.Krishma Bothra

.. Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai, 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 in connection with the order of detention passed by the second respondent dated 26.08.2017 in Memo No.515/BDCFGISSSV/2017 against the petitioner's brother Gagan Bothra, son of Mukund Chand Bothra, aged about 27 years, who is confined at Central Prison, Puzhal, Chennai, and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
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 is a petition filed against the detention order dated 26.08.2017.

2. As against the detenu, three (3) adverse cases are noted. These being : Crime No.213 of 2017; 233 of 2017; and 244 of 2017. It is pertinent to note that the detenu in the adverse cases is booked under Sections 420, 465, 467, 468, 471

and 506(i) read with 34 of the IPC. In addition, the detainee is also charged under Section 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (in short "2003 Act").

2.1. In so far as subject case is concerned, that has been registered as Crime No.277 of 2017. In respect of this case, where, the detainee has been booked under the similar provisions, to which we have made a reference above.

2.2. The record shows that the detainee was arrested on 25.07.2017. This position has been affirmed by the learned Additional Public Prosecutor.

3. Learned counsel for the petitioner assails the order of detention on the following grounds :

(i) That the bail petitions preferred by the detainee, even according to the detaining authority, were pending on the date, when, the impugned order was passed.

(ii) That even though, there is a reference in the impugned order that the detainee was in custody, there is no reference to the order extending the remand.

(iii) A perusal of the arrest memo would show that no intimation was given to the relatives of the detainee and that the intimation, instead, was given to the Superintendent of the Central Prison, Puzhal, Chennai.

4. On the other hand, learned Additional Public Prosecutor relies upon the detention order and the record to resist the petition.

5. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and also perused the record as well.

6. According to us, the impugned detention order cannot be sustained for various reasons :

(i) First, a perusal of paragraph 4 of the impugned order would show that bail applications moved by the detainee in Crime No.213 of 2017; 233 of 2017; 244 of 2017 and 277 of 2017 were, even according to the detaining authority, dismissed on various dates. Furthermore, a perusal of the very same paragraph of the impugned order would show that another attempt, perhaps, was made by the detainee to obtain by filing bail applications in Crime No.213 of 2017; 233 of 2017 and 244 of 2017. These bail applications were also dismissed by the Court concerned. In so far as this Court was concerned, the detainee moved bail applications in Crime No.213 of 2017; 233 of 2017 and 244 of 2017. The impugned order, clearly, states that these bail applications were pending on the date, when, the impugned order was passed.

(i)(a) The detaining authority, however, based on the aforesaid circumstances and on account of the fact that bail was granted in a similar case, i.e., CrI.M.P.No.4817 of 2017, has

entertained an apprehension that the detainee will be enlarged on bail.

(i)(b) While, there is a reference to the bail application, i.e., CrI.M.P.No.4817 of 2017, the date of the order is not given.

(i)(c) According to us, the basis adopted by the detaining authority to come to the conclusion that there was a likelihood of the detainee being enlarged on bail is completely flawed.

(i)(d) As indicated above, repeated bail applications filed by the detainee were rejected by the Courts below. In so far as this Court is concerned, concededly, on the date, when the impugned order was passed, the bail applications filed were pending. [See Arunachalam V. The State of Tamil Nadu and another, 2007-2-L.W.(CrI.) 843].

(i)(e) Moreover, the fact that in a similar case bail was granted also cannot form the basis for the detaining authority to entertain the apprehension that the detainee would be enlarged on bail. This is especially so, as a closer perusal of paragraph 4 would show that the provisions of law, under which the detainee is booked, are not identical to the other case, which is treated by the detaining authority as being similar to the detainee's case. There is commonality qua some sections, but not all.

(ii) Second, even though, the detainee was arrested on 25.07.2017, the impugned order was passed after a delay of more than a month, that is, on 26.08.2017. Notice in this petition was issued on 18.09.2017, despite which, no counter affidavit has been filed. Resultantly, the delay in passing the impugned order remains unexplained.

(iii) Third, learned counsel for the petitioner is right in contending that there is no reference to the remand extension order by the detaining authority in the impugned order.

(iv) Fourth, a perusal of the impugned order would show that intimation was not given to the relatives of the detainee. The intimation, instead, was given to the Superintendent of the Central Prison, Puzhal, Chennai.

(v) Last but not the least, what disturbs us, is that, all adverse cases against the detainee relate to civil transactions. It is because of this reason, that apart from booking the detainee under the provisions of the IPC, the detainee has also been booked under Sections 3 and 4 of the 2003 Act. The detainee may have been indulging in usury, however, that cannot lead to the conclusion that he is a "Goonda", as defined under Tamil Nadu Act 14 of 1982.

7. The State must revisit these cases and not wantonly and casually use the provisions of Tamil Nadu Act 14 of 1982, to detain persons, who may have, otherwise, infringed non-penal provisions of law.

7.1. The provisions of the Tamil Nadu Act 14 of 1982, in our view, are not to be used for the purpose such as the one,

which has been brought to light in the instant case.

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

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.515/BCDFGISSSV/2017, dated 26.08.2017 passed by the second respondent is set aside. The detainee, namely, Gagan Bothra, Male, aged 27 years, S/o.Mukund Chand Bothra, 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.

10. The learned Additional Public Prosecutor is requested to place the order passed today by us before the Director General of Police, Tamil Nadu, for circulation to his subordinate Officers.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Home, Prohibition and Excise Department,
Govt. of Tamil Nadu, Secretariat,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.

3.The Joint Secretary,
Public (Law and order) Department,
Govt. of Tamil Nadu, Secretariat,
Fort St. George, Chennai-9.

4.The Superintendent of Central Prison,
Puzhal, Chennai.

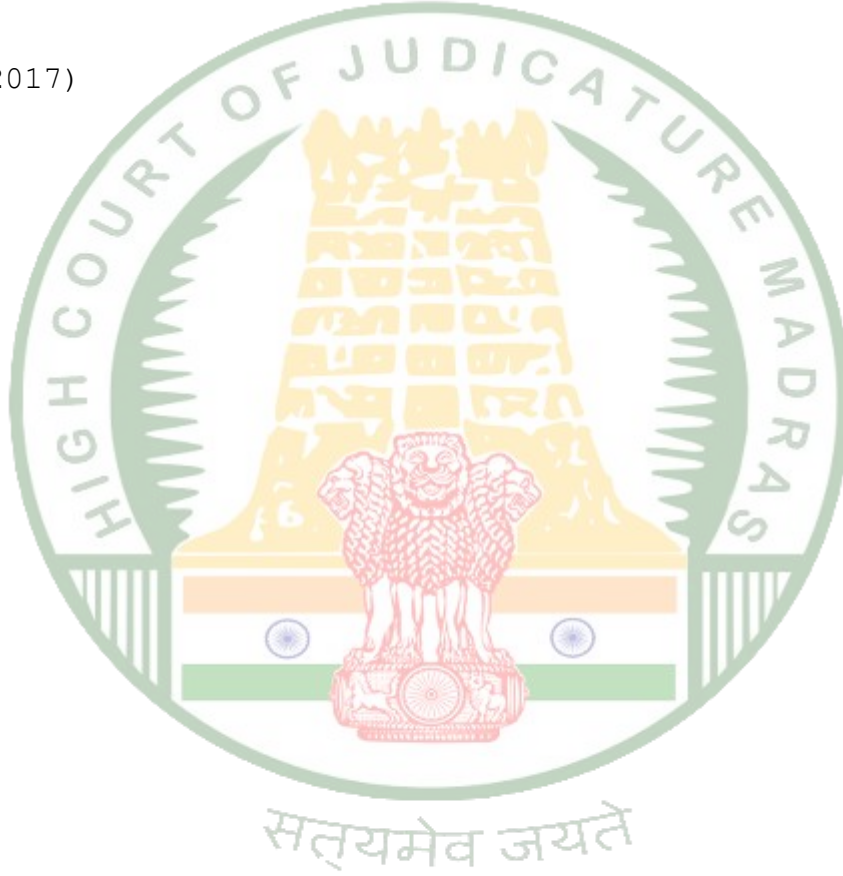
5.The Public Prosecutor, Madras High Court,
Chennai.

6. The Superintendent,
Sub Jail, poonamallee

+5 cc to Mr.V.PARTHIBAN Advocate, S.R.No. 82828

HCP No.1745 of 2017

TR(22/11/2017)



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