

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2017

Coram

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

H.C.P.No.1751 of 2017

Sahadevan @ Sathasivam

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By Secretary,
Prohibition and Excise Department
Fort St. George,
Chennai - 9.

2. The District Collector and District Magistrate
Perambalur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the 2nd respondent dated 06.04.2017 in Cr.M.P.No.8 of 2017 against the petitioner, now confined at Central Prison, Tiruchirappalli and set aside the same and direct the respondent to produce the detenu Palanisamy, aged 23 years, son of Sahadevan alias Sathasivam before this Court and set him at liberty.

For Petitioner : Mr.R.Anburaj

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

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O R D E R
(Order of the Court was made by RAJIV SHAKDHER, J)

1. This is a petition seeks to assail the detention order dated 06.04.2017.

2. This matter had come up before this bench on 30.10.2017. Since there was no representation on behalf of the petitioner, we had issued notice to the petitioner and furthermore, directed

the Tamil Nadu State Legal Aid Services Authority to get in touch with the detainee and to ascertain as to whether or not, he would like to press this petition.

2.1. We may note that a typographical error crept in the order dated 30.10.2017. In as much as, we had referred to the petitioner as the detainee's brother, whereas, the petitioner is the father of the detainee.

2.2. The said typographical error shall stand corrected. The other directions contained in the order dated 30.10.2017, shall remain unaltered.

3. We may also note that the Member Secretary of the Tamil Nadu State Legal Service Authority, pursuant to our order dated 30.10.2017, has filed a report before us.

3.1. The report shows that contact was made with the detainee, whereupon, the detainee indicates that he wanted to press this petition and, that is, how, the counsel for the petitioner is present today.

4. In the impugned order, nine (9) adverse cases have been noted qua the detenu. In all nine (9) cases, the detainee has been booked under Sections 379 of the IPC.

5. In the subject case, which is registered as : Crime No.59 of 2017, the detainee has been booked under Sections 341, 294(b), 397 and 506(ii) of the IPC. The record shows that the detainee was arrested on 16.03.2017.

6. A perusal of the impugned order in paragraph No.5, would show that in Crime Nos.51/2017, 52/2017, 54/2017 and 58/2017, the detainee had moved for bail. However, on the date, when the impugned order was passed, the bail petitions were pending. It appears that the Detaining Authority has come to the conclusion that there is likelihood of the detainee being released, based on bail granted in a similar case (Cr.M.P.No.4619 of 2012) on 18.01.2013. There is a reference to another case, in which bail, once again, was granted in 2013. The number of the said petition is : Cr.M.P.No.5448 of 2013. The order in this case was passed on 26.07.2013.

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

(i) First, even though the detainee was arrested on 16.03.2017, the detention order was passed on 06.04.2017. There has been an unexplained delay of three (3) weeks.

(ii) Second, even according to the Detaining Authority, the bail petitions filed by the detenu in Crime Nos.51/2017, 52/2017, 54/2017 and 58/2017 were pending, on the date when the impugned order was passed. The only reason, which has prevailed with the Detaining Authority for confining the detenu is that, in two (2) similar cases, bail was granted. As indicated above, bail in those two (2) cases were granted in 2013. According to us, this fact, by itself, cannot be the reason for entertaining an apprehension that there is a real and imminent possibility of the detenu being enlarged on bail.

(iii) Third, even though notice in this petition was issued, as far back as on 19.09.2017, no counter affidavit has been filed by the State. Resultantly, the assertions made in the petition have remain uncontroverted.

8. Thus for the foregoing reasons, we are inclined, as indicated above, 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 Cr.M.P.No.08 of 2017, dated 06.04.2017, passed by the second respondent is set aside. The detenu, namely, Palanisamy, S/o.Sahadevan alias Sathasivam, male, aged about 23 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(CCC)

//True Copy//

Sub Assistant Registrar

vsm

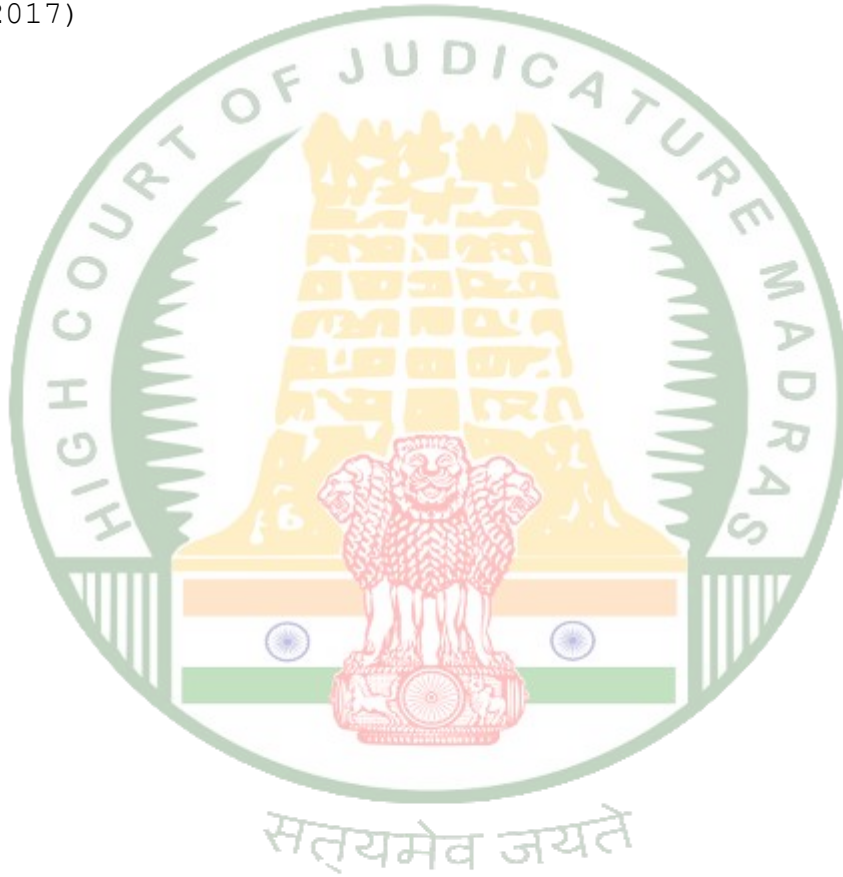
To

1. The Secretary to Government,
Prohibition and Excise Department
Fort St. George, Chennai - 9.
2. The District Collector and District Magistrate
Perambalur.
3. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

4. The Superintendent,
Central Prison, Tiruchirappalli.
[In duplicate for communication to the detenu] By Fax
5. The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1751 of 2017

LRS (CO)
CA(20/11/2017)



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