

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017

Coram

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

H.C.P.No.1767 of 2017

Pushpaveni

... Petitioner

Vs.

- 1.The Secretary to Government,
Government of India
Ministry of Home Affairs,
(Department of Internal Security)
North Block, New Delhi.
- 2.The Secretary to Lieutenant Governor,
Rajnivas
Puducherry.
- 3.The Additional Secretary to Government (Home)
Government of Puducherry
Chief Secretariat, Gubert Avenue
Puducherry.
- 4.District Magistrate cum Authorized Officer,
Puducherry
1st Floor, Revenue Complex
Saram, Puducherry - 605 013.
- 5.The Superintendent of Police (West)
Puducherry.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention order in detention order No.06/DM/RO/D2/PPASAA/2017 dated 28.06.2017 on the file of the fourth respondent herein, and quash the same and direct the respondents herein to produce the body of the detenu Rathinavel son of Kanagasabai husband of Pushpaveni Hindu aged about 44 years who is now confined in Central Prison Kalapet, Puducherry before this Court and set him at liberty.

For Petitioner : Mr.S.Raja Ravi Varma
For Respondents : Mr.S.Arockiam, CGSC for R1
Mr.Bharatha Chakravarthy
Public Prosecutor for R2 to R4.

O R D E R

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

1. This is a petition which seeks to challenge the detention order dated 28.06.2017.

2. A perusal of the detention order would show that detenu is said to have been involved in fifteen (15) cases, which includes the subject case i.e., Crime No.40 of 2017.

2.1. The Detaining Authority in paragraph No.4 of the impugned order has also noted that out of the fifteen (15) cases, seven (7) cases are preventive in nature, and that, while, in three (3) cases, the detenu stands acquitted. Furthermore, it is also observed by the Detaining Authority that in three (3) cases trial is pending, while in one (1) case investigation is underway. The one (1) case, which is under investigation, is the subject case, i.e., Crime No.40 of 2017. The Detaining Authority, in these circumstances, has noted in the very same paragraph of the impugned order, that it has considered only the three (3) cases, in which trial is pending and the fourth case, which is under investigation.

2.2. The record shows that the detenu was arrested on 04.05.2017.

3. The counsel for the petitioner has assailed the detention order; particularly, on two grounds, one, that there was a delay in passing the impugned detention order; and two, that the status of the bail petition, said to have been moved by the detenu in Crime No.40 of 2017, is not indicated by the Detaining Authority.

4. We are further informed that the co-accused in Crime No.40 of 2017, who were also detained, have obtained release orders, vide judgments dated 10.11.2017 and 20.11.2017 passed in H.C.P.Nos.1598 and 1599 of 2017 and H.C.P.Nos.1580 & 1581 of 2017 respectively.

5. Mr.Bharatha Chakravarthy, learned Public Prosecutor (Puducherry) resists the petition based on the conclusion reached by the Detaining Authority, via the impugned order and record of the case.

6. We have heard the learned counsel for the petitioner and the learned Public Prosecutor (Puducherry). We have also

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

(i) First, though the detenu was arrested on 04.05.2017, the impugned detention order was passed on 28.06.2017. Notice in this petition was issued on 20.09.2017. Despite notice, no counter affidavit has been filed by the Union Territory of Puducherry. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, a perusal of paragraph No.7 of the impugned order, clearly, establishes that the status of the bail petition (Cr.M.P.No.93 of 2017) moved in Crime No.40 of 2017 is not indicated by the Detaining Authority. Furthermore, the copy of the bail petition has also not been supplied to the detenu. This fact is not disputed before us by the learned Public Prosecutor.

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

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.06/DM/RO/D2/PPASAA/2017 dated 28.06.2017, passed by the fourth respondent is set aside. The detenu, namely, Rathinavel, S/o.Kanagasabai, male, 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/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government,
Government of India
Ministry of Home Affairs,
(Department of Internal Security)
North Block, New Delhi.
- 2.The Secretary to Lieutenant Governor,
Rajnivas, Puducherry.
- 3.The Additional Secretary to Government (Home)
Government of Puducherry
Chief Secretariat, Gubert Avenue
Puducherry.

4.District Magistrate cum Authorized Officer,
Puducherry
1st Floor, Revenue Complex
Saram, Puducherry - 605 013.

5.The Superintendent of Police (West)
Puducherry.

6.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

7.The Superintendent,
Central Prison,
Kalapet, Puducherry.
[In duplicate for communication to the detenu] (By fax)

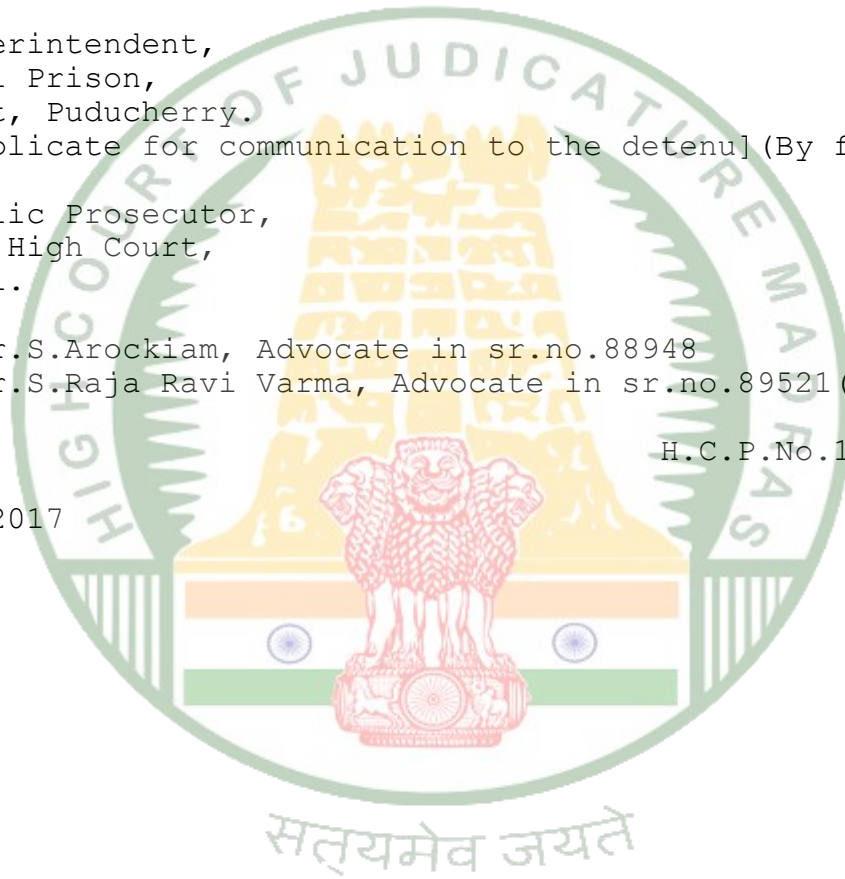
8.The Public Prosecutor,
Madras High Court,
Chennai.

+lcc to Mr.S.Arockiam, Advocate in sr.no.88948

+lcc to Mr.S.Raja Ravi Varma, Advocate in sr.no.89521 (15/12/17)

H.C.P.No.1767 of 2017

NR 14/12/2017



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