

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 30.11.2017****CORAM:**

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1901 of 2017

G.Santhi

... Petitioner

-VS-

1.The State of Tamil Nadu, rep.
by its Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George,
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, calling for the records of the second respondent herein pertaining to the detention order made in Memo No.558/BCDFGISSSV/2017 dated 14.09.2017 and quash the same and direct the respondents to produce the body of the detenu GOVINDARAJ, son of Kuppan, aged 35 years, now detained in Central Prison, Puzhal, before this Hon'ble Court and set the detenu at liberty forthwith.

For Petitioner : Mr.V.S.Mannarsamy
For Respondents : Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1.This petition is directed against the detention order, dated 14.09.2017. In so far as the detenu is concerned, a perusal of the impugned order, would show, that there are no previous cases registered against him.

1.1.The detenu, evidently, is involved in only one case, which is, the subject case. The case is registered as : Cr.No.1212/2017. In respect of the said case, the detenu has been booked, under Sections 8 (c) r/w.29 (b) (ii) (B) of NDPS Act, 1985 r/w. 6 (b) and 24 (1) COTP Act, 2003.

2.The record shows that the detenu was arrested on 22.08.2017, along with the co-accused, one, Mr.Brammadev Sharma.

2.1.A perusal of the record, would also show that, even though the detenu had moved a bail petition (Crl.M.P.No.2654/2017) before the Principal Judge, Special Court, the same was pending, on the date, when the impugned order was passed.

2.2.The Detaining Authority, however, based on the fact, that, in similar case, bail was granted in 2014, has come to the conclusion that there was every likelihood of the detenu, being enlarged on bail.

Pertinently, in the impugned order, there is no reference, to the date, as to when, the order was passed in the "similar case", though, the crime number

of the said case is set out in the impugned order.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and also perused the records.

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

(i) First, the detenu was arrested on 22.08.2017, whereas, the impugned order was passed on 14.09.2017. The delay, in passing the impugned order, has not been explained. This is, despite the fact that notice in this petition, was issued on 13.10.2017 and an opportunity was granted to the State, to file a counter affidavit, in the matter.

(ii) Second, even according to the Detaining Authority, on the date, when the impugned order was passed, the bail application moved by the detenu, was pending. The conclusion reached by the Detaining Authority that there was a real and imminent likelihood of the detenu being enlarged on bail because an order was passed in similar case in 2014, or, that his bail petition was pending is, clearly, flawed.

4.1. We may also note that in so far as the co-accused, Mr. Brammadev Sharma is concerned, vide order dated 24.11.2017, passed in H.C.P.No.1911 of 2017, we have, already directed, his release, albeit, on

the ground, that there was delay in considering his representation by the concerned authority.

5.Thus, for the foregoing reasons, we are of the view, as indicated above, that the impugned order needs to be quashed.

5.1.It is directed accordingly.

6.In the result, the Habeas Corpus Petition is allowed and the order of detention in No.558/BCDFGISSSV/2017, dated 14.09.2017, passed by the second respondent is set aside. The detenu, namely, Govindaraj, son of Kuppan, aged about 35 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.

[R.S.A.,J.] [N.S.K.,J.]

30.11.2017

Speaking Order/ Non Speaking Order

Index : Yes / No

Internet : Yes

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Note to office:

(i) Issue copy by today itself.

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

To:

- 1.The Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Additional Public Prosecutor,
Madras High Court,
Madras.



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**RAJIV SHAKDHER, J.
And
N.SATHISH KUMAR, J.**

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H.C.P.No.1901 of 2017

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30.11.2017