

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

Coram

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

H.C.P.No.1980 of 2017

Santhi

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Department of Prohibition and Excise (Home)
Fort St. George,
Chennai - 600 009.

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

3.The Inspector of Police,
M-8, Sathangadu Police Station,
Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order in No.374/BCDFGISSSV/2017, dated 23.06.2017 on the file of the second respondent herein and set aside the same as illegal and direct to the respondents to produce the detenu Senthil @ Senthilkumar, son of Durairaj, aged about 38 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraj Kandasamy
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, which seeks to assail the detention order dated 23.06.2017.

2. A perusal of the detention order would show that there are two (2) adverse cases noted qua the detenu. These being : Crime No.242 of 2017 and Crime No.338 of 2017.

2.1. Insofar as Crime No.242 of 2017 is concerned, the detenu has been booked under Sections 341, 294(b), 384 and 506 (ii) of the IPC. As regards, Crime No.338 of 2017, it is noted that the detenu has been booked under Section 379 of the IPC.

3. In respect of the subject case, which is registered as Crime No.786 of 2017, the detenu has been booked under Sections 341, 294(b), 336, 427, 392 r/w 397 and 506(ii) of the IPC.

4. The record shows that the detenu was arrested on 13.05.2017.

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

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

(i) First, though the detenu was arrested on 13.05.2017, the impugned detention order was passed on 23.06.2017. Notice in this petition was issued on 26.10.2017, despite which, State has not filed its counter affidavit. Resultantly, the delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, the detenu's bail application in Crime No.786 of 2017 was pending adjudication with the concerned Court, on the date when the impugned order was passed. The only reason, which the Detaining Authority has furnished for coming to the conclusion that there was a real likelihood of the detenu being released on bail was that the relative may move for bail in Crime No.338 of 2017. The other reason furnished, is that, in a similar case bail was granted in 2016. We may emphasize that the Detaining Authority, clearly, notes that the detenu had not moved for bail in Crime No.338 of 2017. According to us, this factor could not have led to the conclusion that there was real and imminent possibility of the detenu being enlarged on bail. As indicated by us, in several other matters, the "similar case" yardstick applied by the Detaining Authority without examining the parity between cases is a flawed test, as bail is not granted by the Courts based on the similarity of provisions of law under which accused

are booked, albeit, in two (2) different cases. The Courts, while granting bail, on the other hand, look to various other factors including the gravity of offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

6. In these circumstances, as indicated above, 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 No.374/BCDFGISSSV/2017, dated 23.06.2017, passed by the second respondent is set aside. The detenu, namely, Senthil @ Senthilkumar, S/o.Durairaj, male, aged about 38 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-III)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Secretary to the Government,
Department of Prohibition and Excise (Home)
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Chennai City Police,
Greater Chennai,
Commissioner Office, Vepery,
Chennai - 600 007.
- 3.The Inspector of Police,
M-8, Sathangadu Police Station,
Chennai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

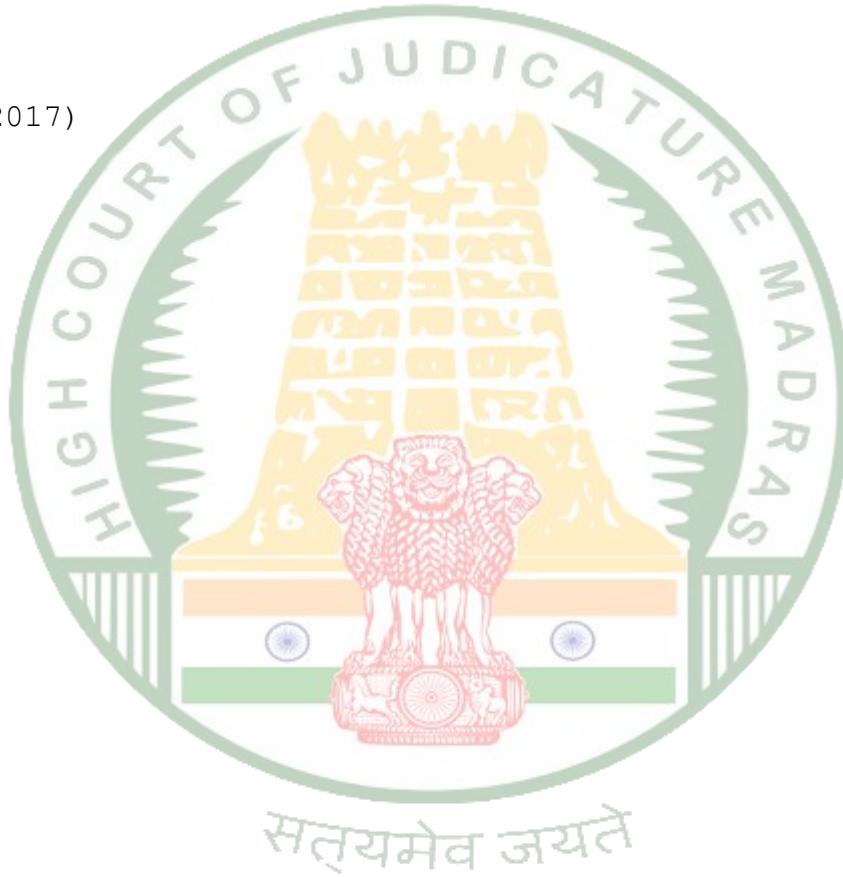
5.The Superintendent,
Central Prison,
Puzhal, Chennai.

[In duplicate for communication to the detenu]

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

H.C.P.No.1980 of 2017

RSK(CO)
TR(07/12/2017)



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