

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2017

Coram

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

H.C.P.No.1988 of 2017
and Crl.M.P.No.14747 of 2017

Kannadoss

... Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Villupuram District,
Villupuram.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in No.C2/27763/2017 dated 06.10.2017 on the file of the second respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Kavidoss Son of Dharmalingam, aged 29 years, who now confined at Central Priosn, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.K.Balakrishnan
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)

Crl.M.P.No.14747 of 2017
in H.C.P.No.1988 of 2017

1. We had issued notice in this petition on 24.11.2017 and directed the respondents to place on record the medical report concerning the detenu.

2. Pursuant to the said order, a medical report has been placed on record by the Tamil Nadu Prison Department. A perusal

of the contents of the the letter dated 03.12.2017 issued by the Tamil Nadu Prison Department to the Public Prosecutor shows that neither is the detenu's kidney malfunctioning nor does he suffer from diabetes. It appears that at the relevant point in time, the detenu suffered from urinary tract infection.

2.1. Furthermore, the letter also refers to the fact that ultrasonography was on the detenu's abdomen, which did not show up any matter of concern. Accordingly, no further orders need to be passed in the captioned petition.

3. This petition, is accordingly, disposed of. Since, the main matter is also listed today, it is taken up for hearing, today, with the consent of counsels.

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4. This is a petition filed to assail the detention order dated 06.10.2017.

5. A perusal of the detention order would show that there are two (2) adverse cases noted qua the detenu. These being : Crime No.444 of 2017 and Crime No.451 of 2017. Insofar these two (2) cases are concerned, the detenu has been booked under Sections 4(1) (aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937 (in short "the TNP Act")

6. As regards the subject case, which is registered as Crime No.584 of 2017, the detenu has been booked under identical provisions of the TNP Act.

7. The record shows that the detenu was arrested on 18.09.2017.

8. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. We have also perused the record. 8.1. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 18.09.2017, the impugned detention order was passed on 06.10.2017. Despite the fact that we had issued notice in the petition as far back as on 26.10.2017, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, a perusal of paragraph No.5 of the impugned order would show that in the subject case i.e., Crime No.584 of 2017, the detenu had moved a bail application before the concerned Court, which, though, on the date of passing of the impugned order, was pending. Furthermore, the Detaining Authority in the very same paragraph of the impugned order also records that the relatives of the detenu have not filed any bail application. The only rationale employed by the Detaining Authority to come to the conclusion that the detenu was likely to be released on bail is the "similar case" yardstick.

According to us, the conclusion reached by the Detaining Authority in this behalf is flawed, for more than one reason : One, the bail application moved by the detenu in Crime No.584 of 2017 was pending, on the date when the impugned order was passed. The Detaining Authority having taken note of the fact that no bail application had been filed by the relatives either in this Court or any other subordinate Court, it could not have possibly entertained an apprehension that the detenu was likely to be enlarged on bail. In our view, the "similar case" test often employed by the Detaining Authority to justify the detention is erroneous, as bails are not granted by the Courts based on the similarity of provisions of law under which accused in two different cases are booked. The Courts, while granting bail, on the other hand, look 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. Therefore, the yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator in coming to the conclusion that likelihood of the detenu being enlarged on bail was real and imminent. In any event, we may also note that the Detaining Authority has relied upon bail granted in a similar case in 2014. The detenu, as noticed above, was arrested on 18.09.2017.

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

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.C2/27763/2017, dated 06.10.2017, passed by the second respondent is set aside. The detenu, namely, Kavidoss, S/o.Dharmalingam, male, aged about 29 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/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

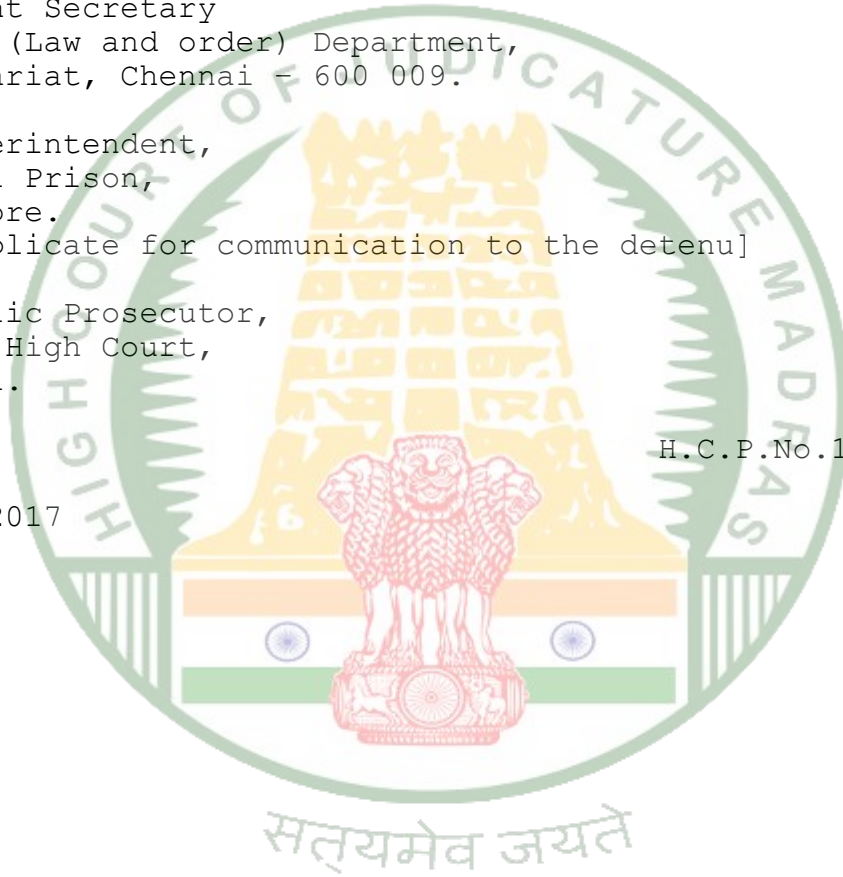
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To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Villupuram District,
Villupuram.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai 600 009.
- 4.The Superintendent,
Central Prison,
Cuddalore.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1988 of 2017

NR 05/12/2017



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