

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2017

Coram

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

H.C.P.No.2001 of 2017

Mr.R. Venkatachalam

... Petitioner

Vs.

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and
District Magistrate of Cuddalore District,
Cuddalore. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records of detention passed by the second respondent dated 25.04.201 in C3/DO/13/2017 against the petitioner's son Gopi, son of Venkatachalam, aged about 24 years, who is confined at Central Prison, cuddalore and set aside the same and direct the respondents to produce the detainee/Mr.Gopi before this Court and set him at Liberty.

For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.V.M.R.Rajendran
Additional Public Prosecutor

O R D E R

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

1. This petition seeks to challenge the detention order dated 25.04.2017. A perusal of the Detention Order would show that four (4) adverse cases have been noted qua the detainee/Mr.Gopi. These being : Crime No.149 of 2015; Crime No.37 of 2016; Crime No.40 of 2016; and Crime No.48 of 2016. Insofar as the subject case is concerned, it is registered as Crime No.110 of 2017. In this case, the detainee/Mr.Gopi has been booked under sections 353 and 307 of IPC.

1.1. The record shows that the detainee/Mr.Gopi was arrested on 01.04.2017.

2. Furthermore, a perusal of the paragraph 5 of the impugned order would show that, the detainee/Mr.Gopi had filed a bail application in Crime No.110 of 2017, which was dismissed on 11.04.2017.

2.1. Besides this, the detainee/Mr.Gopi had also filed bail applications in the aforementioned two (2) adverse cases i.e., Cr.No.40 of 2016 and Cr.No.48 of 2016. These applications were allowed vide orders dated 24.02.2016 and 29.02.2016.

3. Based on the aforesaid facts and circumstances, the Detaining Authority has come to a conclusion that the detainee/Mr.Gopi is likely to be released on bail.

4. Mr.V.Parthiban, who appears on behalf of the petitioner says that, the impugned detention order was passed one day after the dismissal of application preferred by the detainee/Mr.Gopi in Crime No.110 of 2017, that is, 24.04.2017. According to the learned counsel, the Detaining Authority could not have come to a conclusion the day after, i.e., 25.04.2017, that there was a real likelihood of the detainee/Mr.Gopi being released from the custody. Furthermore, the counsel submitted that the fact that bail was granted in two (2) adverse cases could not have formed the basis for the Detaining Authority to entertain an apprehension that the detainee/Mr.Gopi would be released on bail in other two (2) adverse cases, no applications for bail had been moved, coupled with the fact that in the subject case, i.e., Crime No.110 of 2017, bail had been declined.

4.1. Thus, in other words, the learned counsel appearing on behalf of the petitioner says that there is total non-application of mind by the Detaining Authority. In order to buttress his submission, learned counsel relied upon an order dated 31.07.2013, passed by a Division Bench of this Court in Habeas Corpus Petition No.492 of 2013.

5. On the other hand, the learned Additional Public Prosecutor placed reliance upon the impugned order and the record to resist the petition.

6. We have perused the records and heard the learned counsel appearing on behalf of the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

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

(i) First, the detainee/Mr.Gopi was arrested on 01.04.2017, while, the impugned order was passed on 25.04.2017. Even though the notice was served on the learned Additional Public Prosecutor on 2.10.2017, no counter affidavit has been filed by the State. Therefore, the reason for delay in passing the impugned order remains unexplained.

(ii) Second, even according to the detaining authority, the bail application filed by the detainee/Mr.Gopi in Crime No.110 of 2017 was dismissed on 24.04.2017. Therefore, immediately thereafter, the detaining authority could not have entertained the apprehension that the detainee/Mr.Gopi would be released on bail. The fact that the detainee/Mr.Gopi had been enlarged on bail in Crime No.40 of 2016 and Crime No.48 of 2016, could not have formed the basis for passing the detention order dated 25.04.2017, when he was required to be in custody in Crime No.110 of 2017.

8. Therefore, for the aforesaid reasons, we are of the opinion, as indicated above, that the impugned order cannot be sustained. It is ordered accordingly.

9. In the result, the Habeas Corpus Petition is allowed. The Order of detention in No. C3/DO./13/2017 dated 25.04.2017, passed by the second respondent is quashed. The detainee, namely, Mr.Gopi, son of Mr.Venkatachalam aged about 24 years, is directed to be released forthwith unless his custody is required in connection with another case.

10. Consequently, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

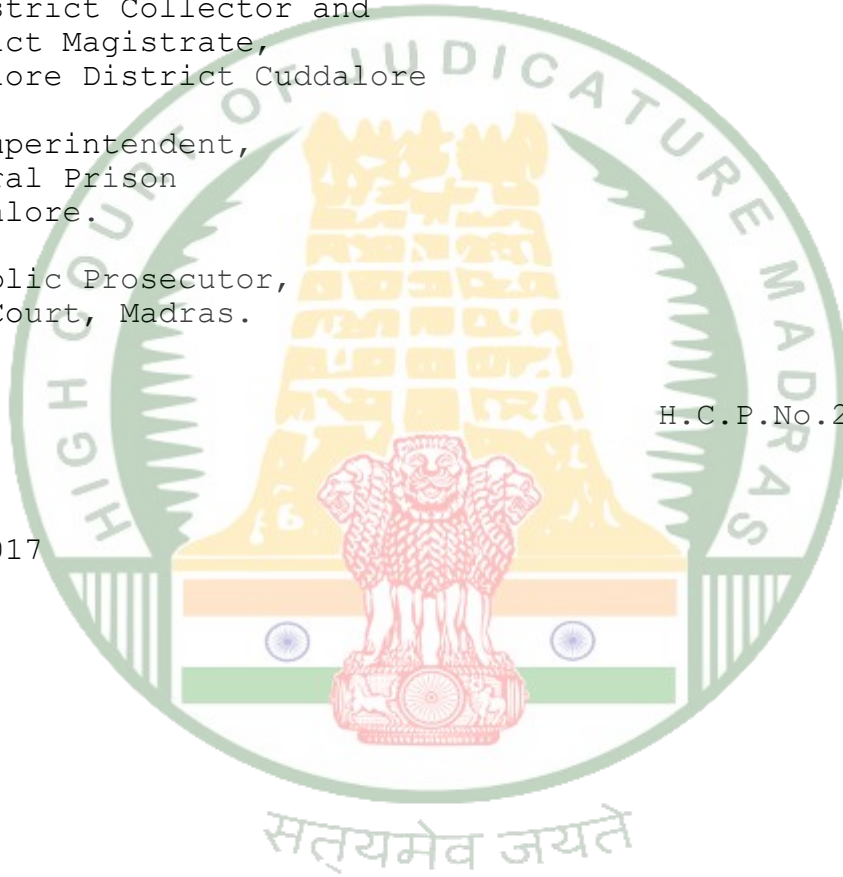
ggs/vrc

To

- 1.The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
3. The District Collector and
District Magistrate,
Cuddalore District Cuddalore
4. The Superintendent,
Central Prison
Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2001 of 2017

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