

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

Coram

The Hon'ble Mr. Justice RAJIV SHAKDHER
and
The Hon'ble Mr. Justice N. SATHISH KUMAR

H.C.P.No.2016 of 2017

Karpakam

.. Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.
2. Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 0009.

.. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ in the nature of Habeas Corpus, calling for records in Memo No.345/BCDFGISSSV/2017, dated 13.04.2017, on the file of respondent No.1- Commissioner of Police, Greater Chennai, Vepery, Chennai-600 007, and to produce the body of the person, viz., Suresh @ Jollu Suresh, now detained in the Central Prison, Puzhal, Chennai-600 006, and to set aside the abovesaid order and to set the petitioner's son at liberty.

* * *

For Petitioner : NA

For Respondents: Mr.V.M.R.Rajentran,
Additional Public Prosecutor

O R D E R

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

1. There is no representation on behalf of the petitioner. However, we have examined the record. The record shows that the instant petition has been filed to assail the detention order dated 13.06.2017.

2. A perusal of the impugned order would show that three (3) adverse cases have been noted qua the detainee. These being : Crime No.1444 of 2016; Crime No.1445 of 2016; and Crime No.460 of 2017. In so far as the subject case is concerned, it is registered as Crime No.461 of 2017.

2.1. The record shows that the detainee was arrested on 16.05.2017.

3. Furthermore, a perusal of the impugned order would show that in Crime No.460 of 2017 and in Crime No.461 of 2017, the detainee had moved for bail, the adjudication of which, was pending on the date, when, the impugned order was passed. The only reason furnished by the Detaining Authority that the detainee could be enlarged on bail was that the relatives of the detainee were likely to file a bail application in Crime No.460 of 2017. Furthermore, the Detaining Authority has also noted in the impugned order that in a "similar case", bail was granted to the accused in CrI.M.P.No.15367 of 2017. Notably, there is no reference to the date of the order.

4. Having perused the record and heard Mr.Rajentran, learned Additional Public Prosecutor, we are of the view that the impugned order cannot be sustained for the following reasons :

(i) First, though, the detainee was arrested on 16.05.2017, the impugned order was passed, after much delay, on 13.06.2017. We had issued notice in the petition on 30.10.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, even, according to the Detaining Authority, on the date, when, the impugned order was passed, the bail application filed by the detainee in Crime No.460 of 2017 and Crime No.461 of 2017 were pending. The reason supplied by the Detaining Authority in coming to the conclusion that there was a likelihood of the detainee being enlarged on bail was that the relatives of the detainee would move for bail in Crime No.460 of 2017. This apart, the "similar case" test is also applied by the Detaining Authority in coming to the very same conclusion.

(ii)(a). According to us, the aforesaid conclusion is flawed. The fact that the relatives are likely to move application for bail, and that too, in one of the many cases, could not have formed the basis of coming to the conclusion that the detainee was likely to be enlarged on bail. Furthermore, the bail in similar case, apparently, was granted in 2015. As noted above, the date of the order is not adverted to in the impugned order.

(ii)(b). Furthermore, the Detaining Authority has to bear in mind that the "similar case" yardstick employed by it is not valid measure. The Courts grant bail, by looking into various aspects and not merely to the similarity of the provisions of law, under which accused are booked. The Courts are required to look, inter alia, to the gravity of the offence, the ability of the accused to suborn the witnesses, and the likelihood of the accused fleeing from justice.

5. Thus, for the foregoing reasons, we are inclined, as indicated above, to quash the impugned detention order.

5.1. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.345/BCDFGISSSV/2017, dated 13.06.2017, passed by the first respondent is set aside. The detenu, namely, Suresh @ Jollu Suresh, S/o.Ganesan, 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/-

Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

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

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

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

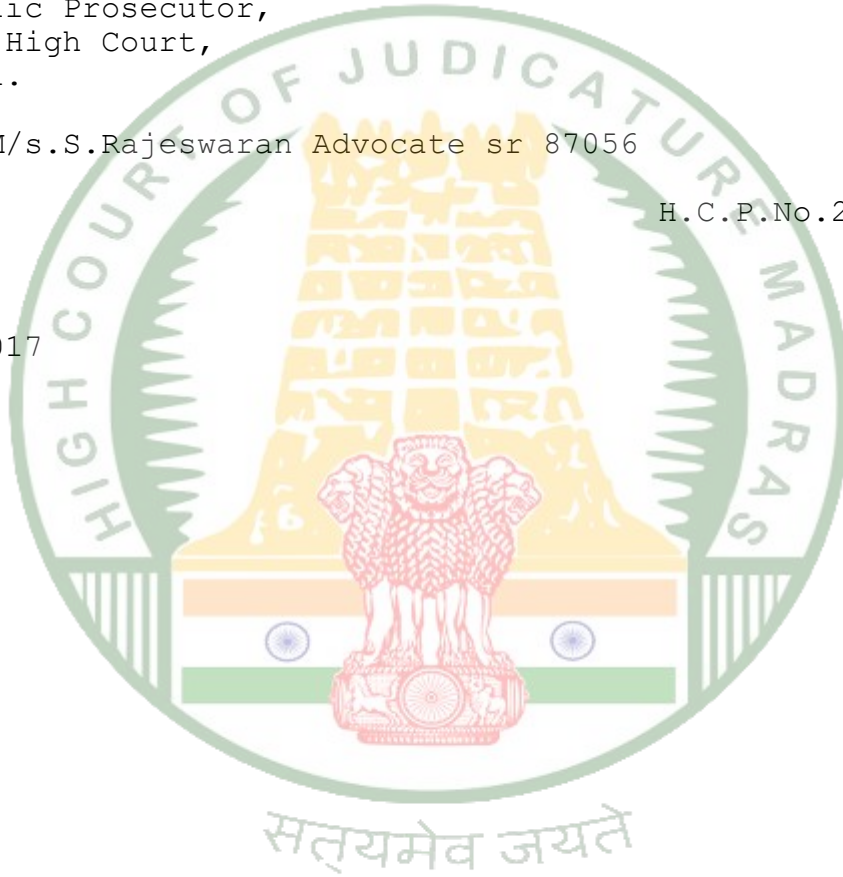
4.The Superintendent,
Central Prison, Puzhal, Chennai.
[In duplicate for communication to the detenu]

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

+1 cc to M/s.S.Rajeswaran Advocate sr 87056

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