

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.2041 of 2017

Sumithra

.. Petitioner

Vs.

1. State of Tamil Nadu,
rep. by the Secretary, Home,
Prohibition and Excise Department,
Fort St. George, Chennai-600 0009.

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

.. 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 the records relating to the detention order in Memo No.509/BCDFGISSSV/2017, dated 24.08.2017, passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Nagaraj, S/o.Arthur, aged about 28 years the detenue, now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's husband Nagaraj, S/o.Arthur, aged about 28 years the detenue herein at liberty.

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For Petitioner : Mr.D.Gopi Krishnan

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. This is a petition, which seeks to assail the detention order dated 24.08.2017.

2. A perusal of the detention order would show that two (2) adverse cases are noted qua the detenue. These being : Crime

No.801 of 2017 and Crime No.916 of 2017. In respect of both cases, the detainee has been booked under Sections 457 and 380 of the IPC.

2.1. Qua the subject case, which is registered as Crime No.921 of 2017, the detainee has been booked under Sections 341, 294(b), 323, 336, 392, 397 and 506(ii) of the IPC.

2.2. Furthermore, the record shows that the detainee was arrested on 01.08.2017.

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

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

(i) First, even though, the detainee was arrested on 01.08.2017, the impugned order was passed only on 24.08.2017, after much delay. We had issued notice in this petition on 02.11.2017, despite which, no counter affidavit has been filed by the State. Resultantly, delay in passing the impugned detention order remains unexplained.

(ii) Second, a perusal of the impugned order would show that though, in Crime No.921 of 2017, the detainee was granted bail, he could not avail of the benefit, as he was unable to offer sureties in the case. In so far as Crime No.916 of 2017 is concerned, even according to the Detaining Authority, bail application was pending on the date, when, the impugned order was passed. As regards Crime No.801 of 2017 is concerned, the detainee had not moved at all for bail, on the date, when, the impugned order was passed. Despite, these circumstances, the only reason that the Detaining Authority has come to the conclusion that there was real and imminent possibility to the detainee being enlarged on bail, was that, the relatives of the detainee had moved for bail in Crime No.801 of 2017.

(ii)(a) According to us, there is a total non-application of mind by the Detaining Authority, as on the date, when, the impugned detention order was passed, the detainee had not moved for bail in Crime No.801 of 2017. The fact that the relatives may have move for bail cannot be the reason in coming to the conclusion that there is a real possibility of the detainee enlarged on bail.

(ii)(b). Furthermore, as noticed above, even in Crime No.916 of 2017, on the date, when, the impugned order was passed, the bail petition was pending adjudication. The rationale employed by the Detaining Authority to come to the conclusion that the detainee was likely to be released on bail is the "similar case" yardstick.

(ii)(b.1). 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 detainee in Crime No.916 of 2017 was pending, on the date when the impugned order was passed. In our view, the "similar case" yardstick 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 are booked. 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 the 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 measure for arriving at the conclusion that the likelihood of the detainee 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 2016. The detainee, as noticed above, was arrested on 01.08.2017.

6. Thus, for the foregoing reasons, we are inclined, as indicated above, to set aside the impugned detention order.

6.1. It is directed accordingly.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.506/BCDFGISSSV/2017, dated 24.08.2017, passed by the second respondent is set aside. The detainee, namely, Nagaraj, S/o.Arthur, male, aged about 28 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

सत्यमेव जयते

//True Copy//

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

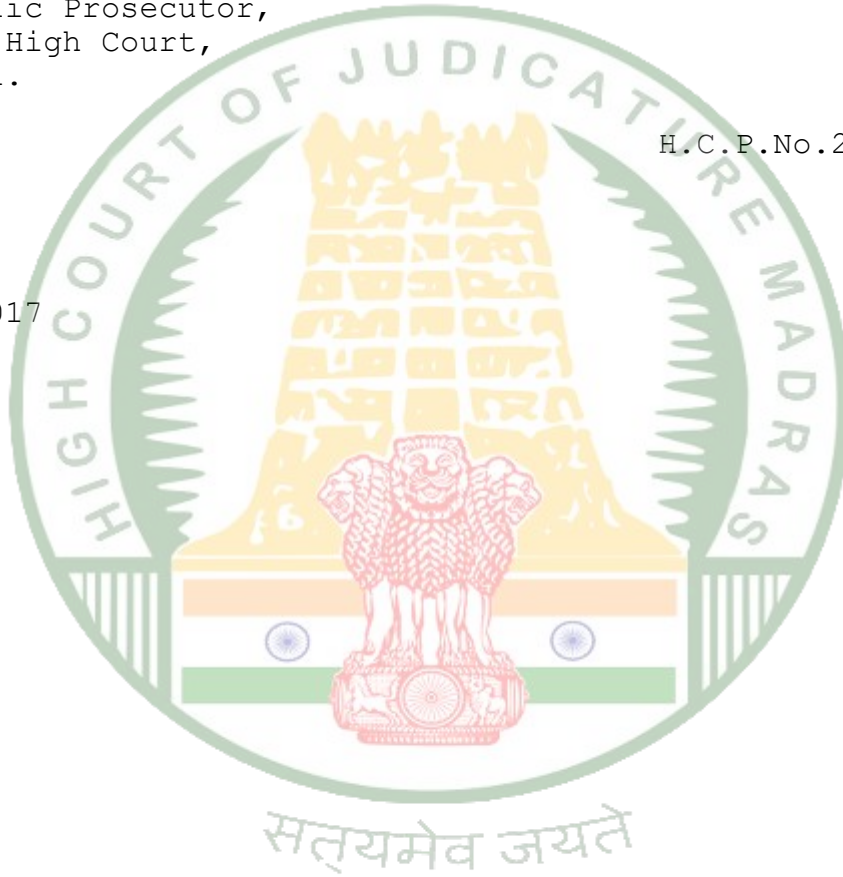
3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

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

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

H.C.P.No.2041 of 2017

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