

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2017

Coram

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

H.C.P.No.2125 of 2017

C.Thirumalai Samy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records pertaining to the impugned detention order vide No.594/BCDFGISSSV/2017 dated 26.09.2017 passed by the second respondent and approved by the first respondent and quash the same as illegal and direct the respondents to produce the detenu Lakshmanan, Son of Thirumalaisamy, aged 34 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.M.Kaveriselvan for Mr.S.Ramkumar

For Respondents : Mr.V.M.R.Rajentran,

Addl. Public Prosecutor.

ORDER

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

1. This is a petition, which seeks to challenge the detention order dated 26.09.2017.

2. A perusal of the detention order would show that one (1) adverse case is noticed qua the detenu. This case is numbered as : Crime No.50 of 2016. Insofar as the said case is concerned, the detenu has been booked under Sections 3(2)(a), 4(1) and 5(1)(a) of ITP Act.

2.1. Furthermore, the record shows that the subject case has been registered as Crime No.103 of 2017. Qua this case, the detenu has been booked under Sections 3(2)(a), 4(1), 5(1)(a), 6(1) and 7(1) of ITP Act. In addition thereto, the record also shows that the detenu was arrested on 14.09.2017.

3. Given this background, we have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor. We have also perused the record. According to us, the impugned detention order cannot be sustained for the following reasons:

(i) First, though, the detenu was arrested on 14.09.2017, the impugned order was passed on 26.09.2017. Notice in this petition was issued on 14.11.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, the Detaining Authority, in our view, wrongly entertained an apprehension that the detainee be released on bail, even while noticing the fact that bail application filed in crime No.103 of 2017 was pending, on the date when the impugned order was passed. A perusal of the impugned order shows that this conclusion, though erroneous, was reached, based on the result obtained in another case, i.e., Crime No.36 of 2017. Pertinently, there is a reference to the number of the bail application moved in Crime No.136 of 2017, but the date of the order is not set forth in the detention order.

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

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.594/BCDFGISSSV/2017 dated 26.09.2017, passed by the second respondent is set aside. The detenu, namely, Lakshmanan, S/o.Thirumalaisamy, male, aged about 34 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.

(R.S.A., J.)

(N.S.K., J.)

22.12.2017

Index : yes/no

vsm

Note: Issue order copy today



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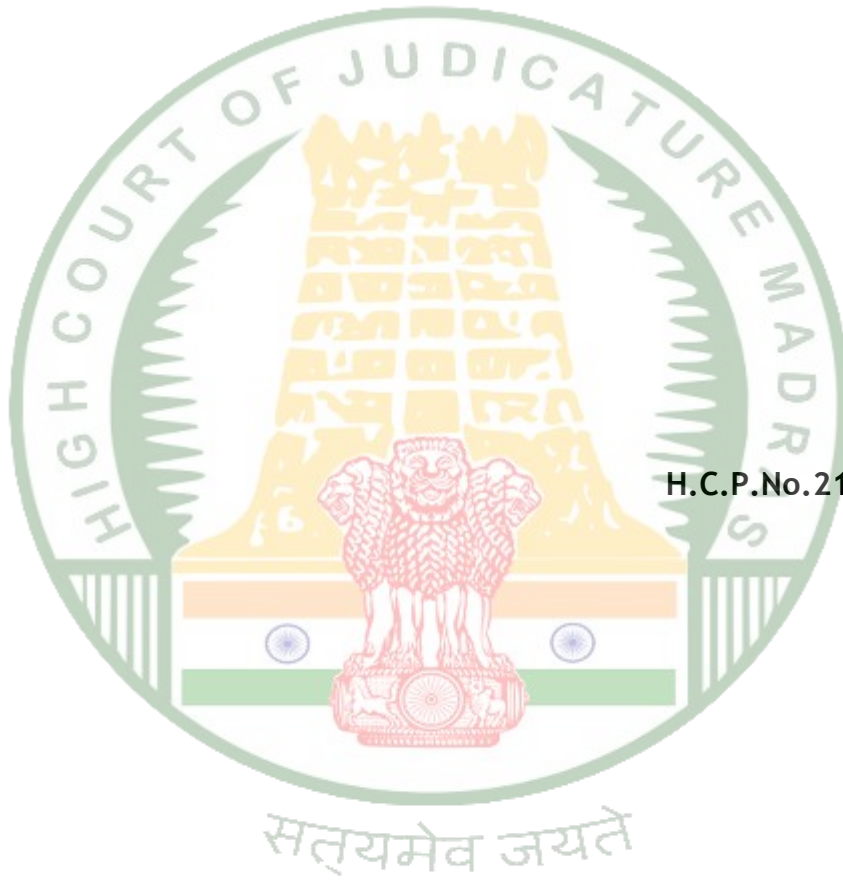
- 1.The Secretary,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.



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RAJIV SHAKDHER, J.
and
N.SATHISH KUMAR, J.

vsm



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