

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

Coram

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

H.C.P.No.2162 of 2017

M.Murugesan

... Petitioner

Vs.

1.State rep. By the Secretary to Government,
Home Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Coimbatore District,
Coimbatore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records culminating in the detention of my son Sivaprakash son of Murugesan under the Act 14 of 1982 vide detention order dated 05.07.2017 on the file of the second respondent herein made in proceeding Cr.M.P.No.11/G/2017/E1 and quash the same as illegal and consequently direct the respondent herein to produce the body and person of the said detenu Sivaprakash son of Murugesan aged about 29 years before this Court and thereafter set him free at liberty from the Central Prison, Coimbatore.

For Petitioner : Mr.D.Chandrasekar
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)

1. This is a petition, which seeks to assail the detention order dated 05.07.2017.

2. A perusal of the detention order would show that there are two (2) adverse cases noted against the detenu. These being : Crime No.182 of 2012; and Crime No.255 of 2017. In respect of both cases, the detenu has been booked under Section 392 of the I.P.C.

3. Insofar as the subject case is concerned, it is registered as : Crime No.257 of 2017. In the said case, the detenu has been booked under Sections 392 r/w Section 397 of the I.P.C.

4. The record shows that the detenu was arrested on 30.04.2017.

5. We have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, learned Additional Public Prosecutor. We have also perused the record. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 30.04.2017, the impugned detention order was passed on 05.07.2017. Notice in this petition was issued on 16.11.2017, despite which, no counter affidavit has been filed. Therefore, the delay in passing the impugned detention order remains unexplained.

(ii) Second, even according to the Detaining Authority, while bail was granted to the detenu in Crime No.255 of 2017, he had not filed any bail application in Crime No.257 of 2017, till the date when the impugned order was passed. The Detaining Authority, however, erroneously entertained an apprehension that the detenu would be enlarged on bail. This conclusion was reached based on the fact that in a similar case bail was granted to the accused, by the concerned Court, on 11.02.2016.

(ii) (a) According to us, there has been a total non application of mind by the Detaining Authority in coming to this conclusion.

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

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.11/G/2017/E1, dated 05.07.2017, passed by the second respondent is set aside. The detenu, namely, Sivaprakash, S/o.Murugesan, 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 (CS-IX)

//True Copy//

Sub Assistant Registrar

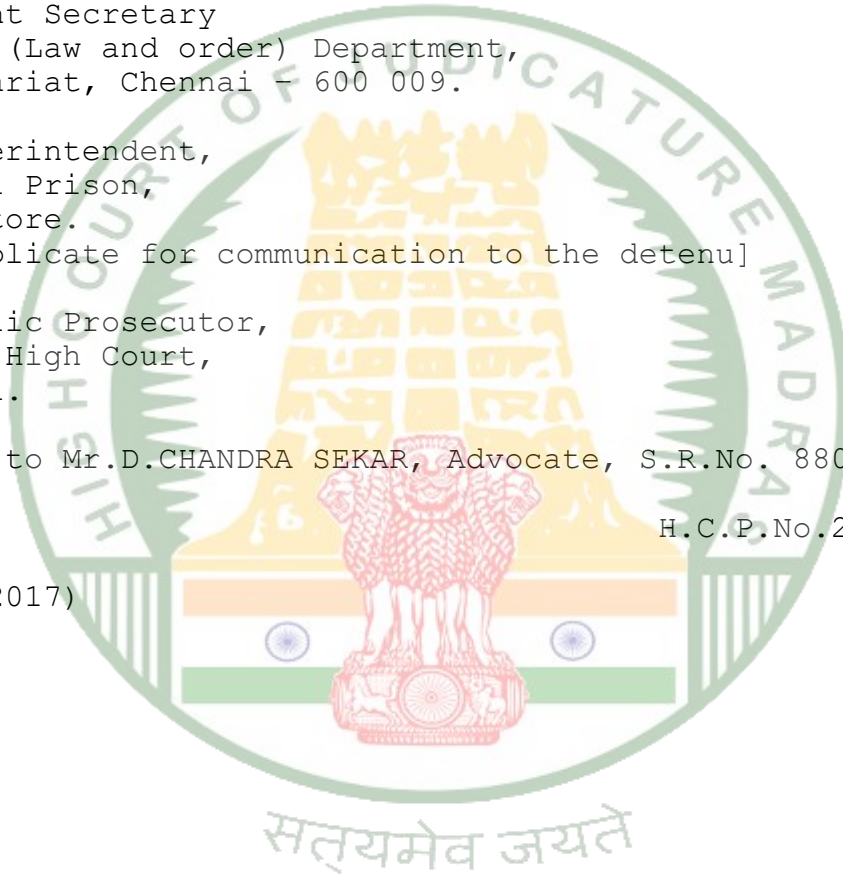
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To

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

+1cc to Mr.D.CHANDRA SEKAR, Advocate, S.R.No. 88087

H.C.P.No.2162 of 2017

TR(12/12/2017)



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