

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.2178 of 2017

A.Ragini

... Petitioner

Vs.

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

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order Memo No.625/BCDFGISSSV/2017 dated 12.10.2017, on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's husband R.Ajeeth Kumar, aged about 23 years, the detenu now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.D.Gopikrishnan

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, whereby, challenge is laid to the detention order dated 12.10.2017.

2. A perusal of the impugned order would show that there are three (3) adverse cases, noticed qua the detenu. These being : Crime No.87 of 2015; Crime No.1223 of 2017; and Crime No.1194 of 2017. In all these cases, the detenu has been booked under Section 379 of the I.P.C.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.1196 of 2017.

3.1. Furthermore, the record shows that the detenu was arrested on 22.09.2017.

4. The Detaining Authority while noting that the bail application moved by the detenu in Crime No.1196 of 2017, was dismissed on 04.10.2017, has come to a conclusion that there was likelihood of the detenu being released on bail, for the reason that he may file a fresh bail application in Crime No.1194 of 2017. This reason is sought to be supported by the Detaining Authority by adverting to the fact that the relatives of the detenu were likely to file

another bail application in Crime No.1196 of 2017. The Detaining Authority has also alluded to the fact that in similar case, i.e., Crime No.212 of 2016 and Crime No.656 of 2016, bail were granted. For all these reasons, the Detaining Authority appears to have entertained an apprehension that there was a real possibility of the detenu being enlarged on bail.

5. 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 22.09.2017, the impugned order was passed only on 12.10.2017. Notice in this petition was issued on 17.11.2017, despite which, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, while the Detaining Authority noted the fact that the bail application moved by the detenu in Crime No.1196 of 2017 was dismissed on 04.10.2017, erroneously, has come to the conclusion that there was a possibility of the detenu being released on bail based on the fact that the relatives of the detenu were likely to move for bail in Crime No.1196 of 2017 and that the detenu may move a fresh bail application in Crime No.1194 of 2017. This error was compounded, in a sense, as the Detaining Authority took into account the decision rendered in a similar case in 2016. According to us,

there is a total non-application of mind, given the fact that the bail application in Crime No.1196 of 2017 stood dismissed and no bail application had been filed in Crime No.1194 of 2017 as on the date when the impugned order was passed. The possibility of the detenu being enlarged on bail was neither real nor imminent.

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 No.625/BCDFGISSSV/2017 dated 12.10.2017, passed by the second respondent is set aside. The detenu, namely, Ajeethkumar, S/o.Rajapathar, male, aged about 23 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.

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(R.S.A., J.)

(N.S.K., J.)

22.12.2017

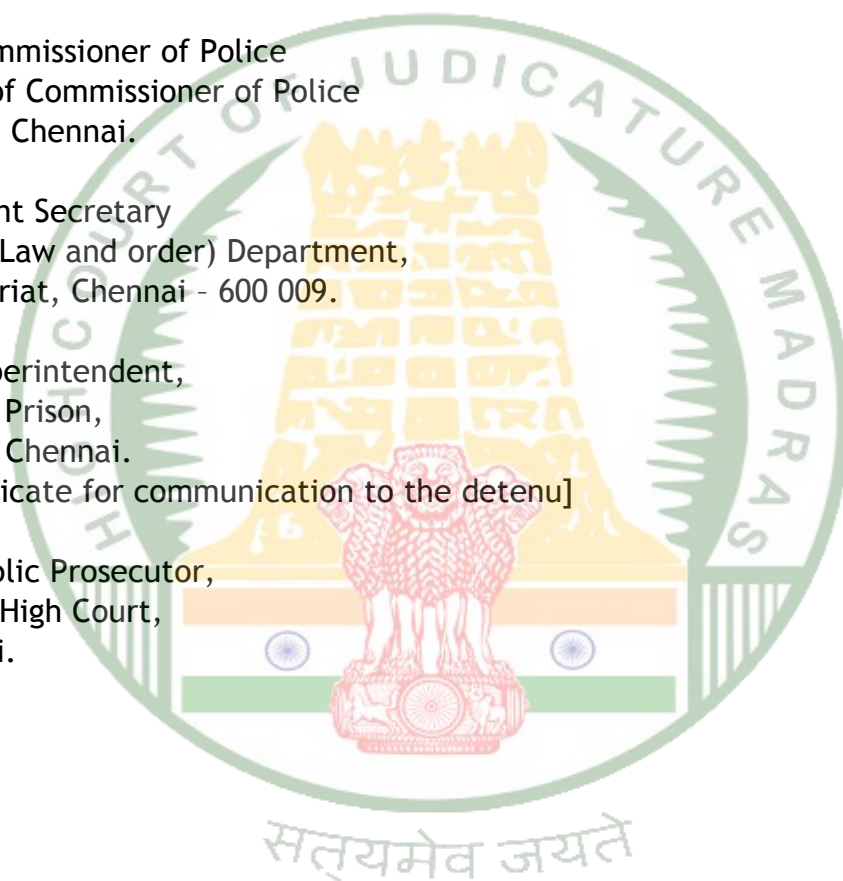
Index : yes/no

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Note: Issue order copy today

To

- 1.The Secretary,
Home, Prohibition & Excise (XVI) Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police
Office of Commissioner of Police
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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