

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

Coram

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

H.C.P.No.2204 of 2017

Vembli

... Petitioner

Vs.

1.The Secretary to Government,
Home Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.District Collector &
District Magistrate
Vellore District
Vellore-9

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the second respondent dated 03.11.2017 in C3.D.O.No.114/2017 against the petitioner son Purusothaman, male aged 29 years S/o.Shanmugam who is confined at Central Prison Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.Senthilvel

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 filed against the detention order dated 03.11.2017.

2. A perusal of the detention order shows that there is only one case has been registered against the detenu. This case is numbered as: Crime No.541 of 2017.

2.1. The detenu, as per the record, was arrested on 05.10.2017. Qua this case, the detenu has been booked under

Sections 379, 430, 353 and 307 of the IPC r/w Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957.

3. We have heard the learned counsel for the petitioner as well as the 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 05.10.2017, the impugned detention order was passed only on 03.11.2017. Notice being issued in this petition on 22.11.2017, despite which, no counter affidavit has been filed. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) A perusal of paragraph No.5 of the impugned order would show that the detenu had moved for bail in Crime No.541 of 2017 before the Principal Sessions Judge, Vellore, which was dismissed on 23.10.2017.

(ii)(a) Furthermore, a perusal of the very same paragraph of the impugned order would show that the detenu, evidently, moved a bail petition before this Court, which was pending on the date when the impugned order was passed.

(ii) (b) The Detaining Authority, however, appears to have entertained an apprehension that the detenu will be enlarged on bail, because Courts generally grant bail in such like matters. According to us, the reasoning of the Detaining Authority is completely flawed. The Courts while granting bail look to various factors, including the gravity of offence, the ability of the accused to suborn witnesses, and the possibility of the accused fleeing from justice.

4. Thus, having regard to the aforesaid, 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 C3.D.O.No.114/2017 dated 03.11.2017, passed by the second respondent is set aside. The detenu, namely, Purusothaman, S/o.Shanmugam, 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/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
Home Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.District Collector &
District Magistrate
Vellore District
Vellore-9

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

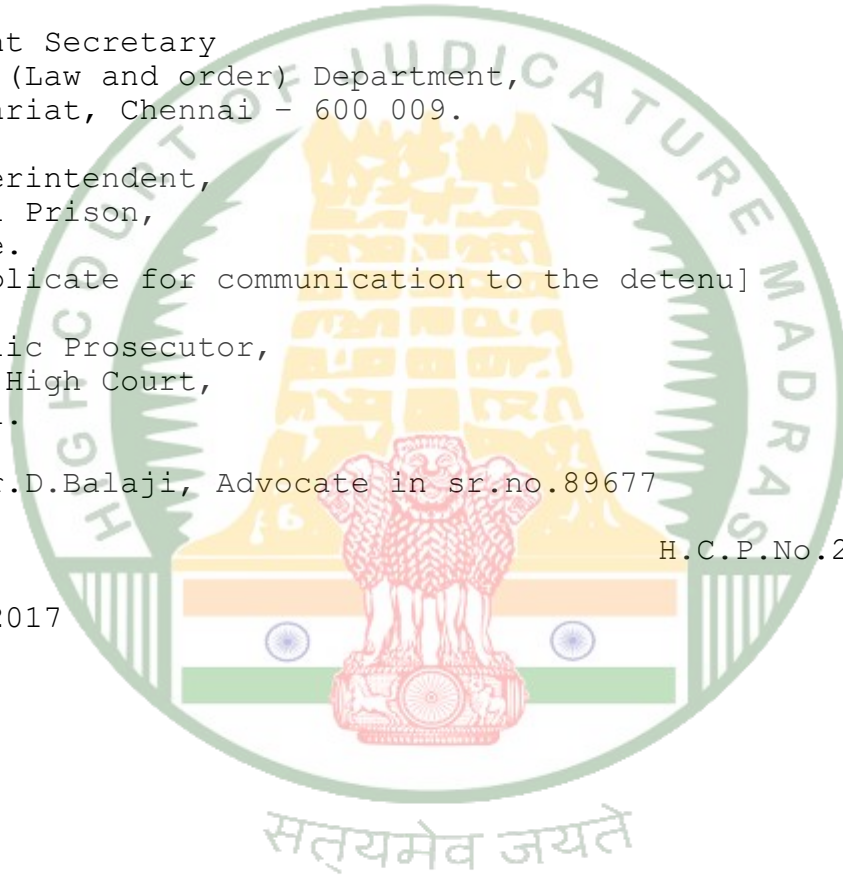
4.The Superintendent,
Central Prison,
Vellore.
[In duplicate for communication to the detenu]

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

+1cc to Mr.D.Balaji, Advocate in sr.no.89677

H.C.P.No.2204 of 2017

NR 15/12/2017



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