

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

Coram

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

H.C.P.No.2208 of 2017

Suseela

... Petitioner

Vs.

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

2.The Commissioner of Police
Chennai Police
Vepery, Chennai-7.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire records leading to the detention of the petitioner's husband Kumar @ Ravikumar @ Ogai Kumar Son of Natarajan Male aged 58 years has been detained under Act 14/82 as a "Goonda" vide detention order dated 17.07.2017 on the file of the 2nd respondent herein, made in BCDFGISSSV No.428/2017 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Ms.S.Sarala

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 17.07.2017.

2. A perusal of the detention order would show that three (3) adverse cases have been noted qua the detenu. These being : Crime No.948 of 2017; Crime No.1093 of 2017; and Crime No.1634 of 2017. In the first case, the detenu has been booked under Section 380 of the IPC; in the second case, the detenu has been booked under Sections 457 and 380 of the IPC and likewise in the third case, the detenu has been booked under Sections 457 and 380 of the IPC.

3. Insofar as the subject case is concerned, the same is registered as : Crime No.1272 of 2017.

4. A perusal of the detention order would show that insofar as Crime No.1272 of 2017 is concerned, the detenu had filed a bail application, which was pending, on the date when the impugned order was passed.

4.1. Furthermore, the detenu, evidently, also filed bail applications in Crime No.948 of 2017 and Crime No.1093 of 2017. The concerned Court, in these two (2) cases granted bail. The detenu, however, was not able to secure his release, as he was unable to offer sureties.

4.2. Insofar as Crime No.1634 of 2017 is concerned, even according to the Detaining Authority, no bail application had been moved by the detenu.

4.3. The Detaining Authority, however, it appears, entertained an apprehension that the detenu may be enlarged on bail on the ground that the relatives of the detenu were making efforts to secure bail in Crime No.1634 of 2017. This apart, the Detaining Authority in reaching the conclusion that the detenu is likely to be released on bail relies upon the fact that in a similar case pertaining to 2015, bail was granted. Pertinently, the date of the order is not mentioned.

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

5.1. The record shows that the detenu was arrested on 30.05.2017. The detention order was passed only on 17.07.2017. Though notice in this petition was issued on 22.11.2017, no counter affidavit has been filed by the State. Resultantly, the delay in passing the impugned detention order remains unexplained.

5.2. Furthermore, as indicated above, though, bail application was moved by the detenu in Crime No.1272 of 2017, the same was pending, on the date when the impugned order was passed. Moreover, in Crime No.948 of 2017 and Crime No.1093 of

2017, though, bail was granted to the detenu, he was unable to secure his release, as he was not in a position to offer sureties. Therefore, there was no likelihood of the detenu being released from custody. The Detaining Authority, however, based on an erroneous approach came to a contrary conclusion. The Detaining Authority concluded that the detenu would be enlarged on bail, as his relatives were likely to move for bail in Crime No.1634 of 2017, and that, in a similar case pertaining to 2015 bail was granted.

7. We are unable to agree with the Detaining Authority that such conclusion could not have been reached, given the facts and circumstances, which obtain in this case. Accordingly, the impugned order is quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSV No.428/2017 dated 17.07.2017, passed by the second respondent is set aside. The detenu, namely, Kumar @ Ravikumar @ Ogai Kumar, S/o.Natarajan, male, aged about 58 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 VII)

//True Copy//

Sub Assistant Registrar

vsm

To

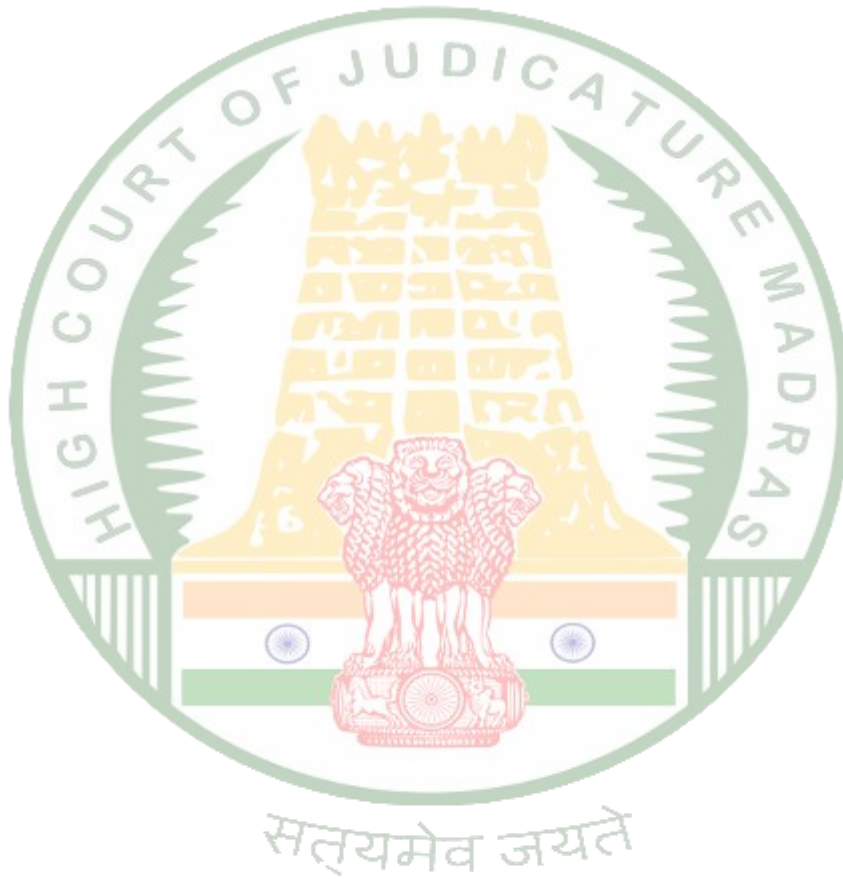
- 1.The Secretary to Government,
Home, Prohibition & Excise Department
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police
Chennai Police
Vepery, Chennai-7.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
[In duplicate for communication to the detenu]

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

H.C.P.No.2208 of 2017

SK (CO)

RRK (13/12/2017)



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