

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

and

THE HONOURABLE MR.JUSTICE S. BASKARAN

H.C.P.No.275 / 2017

Musthafa

...Petitioner

Vs.

1. State of Tamil Nadu, rep. by its
Secretary to Government,
Home, Prohibition & Excise
Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the entire records, relating to the petitioner's friend's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 14.01.2017 on the file of the 2nd respondent herein made in proceedings BCDFGISSSV No. 28/2017, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's friend namely, Nalla Ibrahim S/o. Vahari Mohammed, aged 40 years, before this Hon'ble High Court and set him at liberty from detention, now the petitioner's friend detained at Central Prison-II, Puzhal, Chennai - 600 066.

For Petitioner :: Mr.C.C. Chellappan

For Respondents:: Mr.V.M.R.Rajentren,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.V. MURALIDARAN, J.]

The petitioner, who is the friend of the detenu Nalla Ibrahim, S/o Vahari Mohammed, has come up with this habeas corpus petition, challenging the detention order passed by the 2nd respondent, vide proceedings in B.C.D.F.G.I.S.S.S.V No.28/2017 dated 14.01.2017.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on paragraph No.3 of the Grounds of Detention, wherein, the Detaining Authority has stated as follows:

"3. I am also aware that Thiru Nalla Ibrahim is in remand in Chennai, Egmore, Greater Chennai Police, Video Piracy Cell, Central Crime Branch, Team X, Crime No. 394/2016 and the sponsoring authority stated that Thiru Nalla Ibrahim moved a bail application in Central Crime Branch, Team X, Crime No. 394/2016 before the Hon'ble Chief Metropolitan Magistrate Court, Egmore at Allikulam, Chennai - 3 in CrI.M.P. No. 8823/2016, the same was dismissed in the CMM Court and the accused moved another bail application in Central Crime Branch, Team-X, Crime No. 394/2016 before the Hon'ble Principal Sessions Judge, Sessions Court at Chennai vide CrI.M.P. No. 299/2017 and the same was dismissed on 12.01.2017. Further, the accused again moved another bail application in Central Crime Branch, Team X Crime No. 394/2016 before the High Court of Judicature at Madras in CrI.O.P. No. 1146/2017 dated 12.01.2017 and the same is pending in High Court, Chennai. In a similar case, registered under Section 52(A), 68(A), 51 r/w 63 & 65 of Copy Right Act, 1957 and 292(2)(a) IPC registered in Chennai, Egmore, Greater Chennai Police, Video Piracy Cell, Central Crime Branch, Team X Cr.No. 326/2016, dated 15.10.2016, bail was granted by the learned Hon'ble Principal Sessions Judge, Sessions Court at Chennai vide CrI.M.P. No. 19792/2016. Hence, I infer that there is real possibility of his coming out on bail in Video Piracy Cell, Central Crime Branch, Team X Cr.No. 394 case by filing another bail application before the appropriate court,...."

According to the learned counsel for the petitioner, there cannot be any presumption that the detenu would come out on bail on mere pendency of bail application. Moreover, according to the learned counsel, when the bail application of the detenu is pending before the High Court, there is no possibility of bail being granted by a Subordinate Court and therefore, the similar case, in Cr.No. 326/2016, on the file of Greater Chennai Police, Video Piracy Cell, Central Crime Branch, Team X, relied on by the Detaining Authority, for passing the order of detention, is indicative of total non-application of mind on the part of the Detaining Authority and hence, the order of detention is liable to be set aside.

4. Heard the learned Additional Public prosecutor, who would submit that the order of detention has been passed on cogent and sufficient materials and the same has to be sustained.

5. We have considered the rival submissions. As rightly contended by the learned counsel for the petitioner, when a bail application is pending, it cannot be presumed that the detenu would come out on bail and mere pendency of the bail application would not enable the Detaining Authority to conclude that the Court would certainly grant bail to the detenu. It is nothing but pre-judging the matter. Further, when the bail application of the detenu is pending before the High Court, the grant of bail by a Subordinate Court, in a similar case, cannot be a ground for the Detaining Authority to conclude there is every likelihood of the detenu coming out on bail in the ground case. Thus, in our considered view, without making proper application of mind relating to these facts, the Detaining Authority has passed the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 14.01.2017, passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

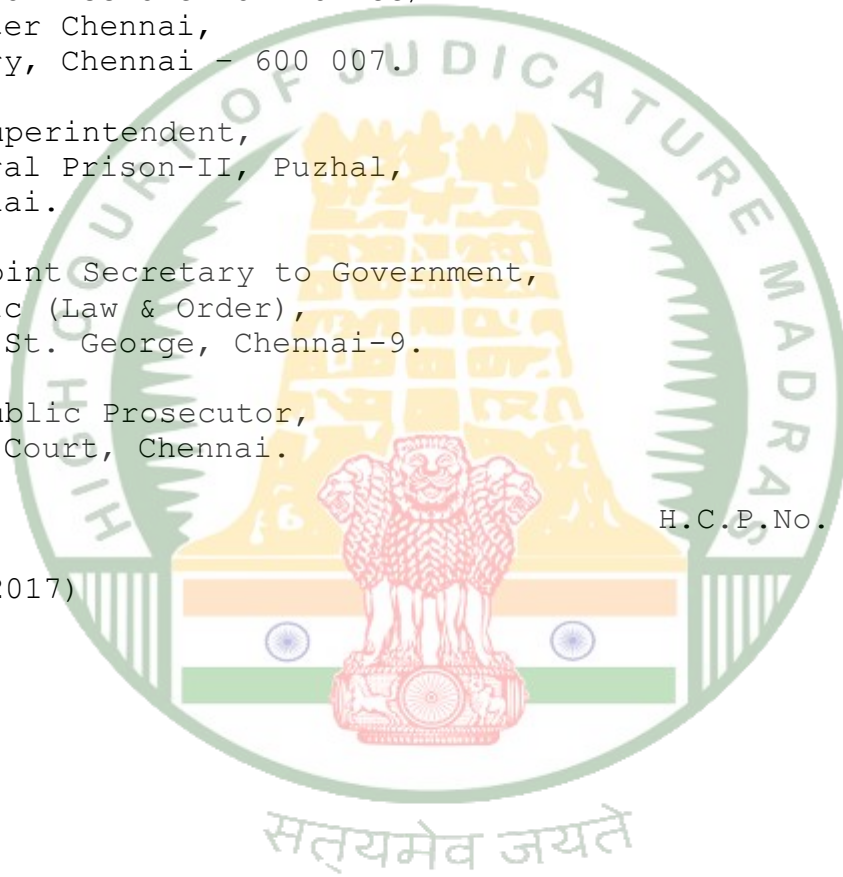
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To

- 1) The Secretary to Government,
Home, Prohibition & Excise
Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police/
Greater Chennai,
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison-II, Puzhal,
Chennai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Chennai.

GJ(CO)
RS(13/06/2017)

H.C.P.No. 275 of 2017



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