

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

H.C.P.No.282 of 2017

Chinnapapa,
W/o.Krishnan

... Petitioner

Vs.

1. The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.
2. The Secretary to the Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
3. The Superintendent,
Central Prison,
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the order of Detention passed by the 1st respondent herein concerned in S.C.No.64/2016 dated 26.12.2016 setting aside the order of detention passed therein against the detenu herein by name Madhavan @ Dharman, Son of Krishnan, quashing the same and setting him at liberty now detained in central prison, Salem.

For Petitioner : Mr.R.Rajan

For Respondents : Mr.E.Raja,
Additional Public Prosecutor

O R D E R

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

The petitioner, who is the mother of the detenu seeks to quash the detention order dated 26.12.2016.

2. The primary contention of the learned counsel for the petitioner is that the petitioner's application for bail is pending consideration for the major offences under Sections 392 and 380 IPC in Crime Nos.290, 141 and 260 of 2016 respectively apart from the other one in Crime No.55 of 2016 for the major offence under Section 380 IPC . He has filed the bail applications for the above said cases, which are pending for consideration before the learned Judicial Magistrate I, Krishnagiri in Crl.M.P.Nos.6527, 6529, 6526 and 6528 of 2016 respectively. However, the Detaining Authority has made reliance upon the order passed in Crl.M.P.No.1503 of 2015 dated 07.08.2015 by the Principal District Sessions Court, Dharmapuri for the offences under Sections 392 and 397 IPC in Crime No.336 of 2015. Therefore, there is a clear non-application of mind as the offences are triable by the Magistrate Court and not by the Sessions Court.

3. The learned Additional Public Prosecutor would submit that any case, a bail would lie before the Sessions Court against the order passed by the Judicial Magistrate.

4. We find that there is a clear non-application of mind for relying upon a similar offence since the major offence which is punishable only by the Court of Sessions cannot be taken into consideration. Admittedly, in all the cases, in which the petitioner is alleged to have been involved, the major offences are under Sections 392 and 380 of IPC, which are triable by the Magistrate Court. Hence, reliance made upon the order passed by the learned Principal Sessions Court, Dharmapuri cannot be sustained in the eye of law.

5. In such view of the matter, we are inclined to set aside the detention order dated 26.12.2016.

6. Accordingly, the Habeas Corpus Petition is allowed and the detention order dated 26.12.2016 is quashed. The detinue is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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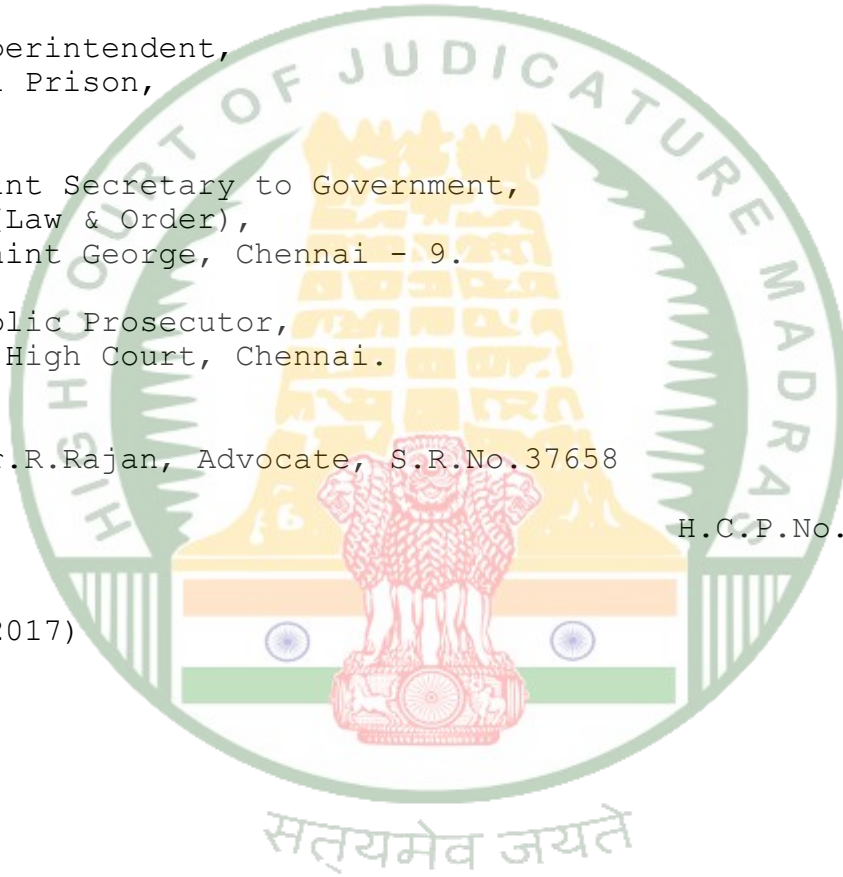
To

1. The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.
2. The Secretary,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
3. The Superintendent,
Central Prison,
Salem.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
Madras High Court, Chennai.

+1cc to Mr.R.Rajan, Advocate, S.R.No.37658

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MP(CO)
CA(05/06/2017)



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