

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.985 of 2017

Susan

... Petitioner

-VS-

1. State of Tamil Nadu
rep.by the Secretary, Home
Prohibition and Excise Department
Fort.St.George, Chennai -600 009

2. The Commissioner of Police
The Commissioner office
Vepery, Chennai -600 007

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.320/BCDFGISSSV/2017, dated 02.06.2017 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the Petitioner's husband SATHISH KUMAR @ CHINNA SATHISH S/o. SHANMUGAM,

aged 27 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband SATHISH KUMAR @ CHINNA SATHISH S/O. SHANMUGAM aged about 27 years the detenu herein at liberty.

For Petitioner : Mr. D.Gopi Krishnan

For Respondents: Mr. V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. This is a petition which seeks to challenge the detention order dated 02.06.2017.

2. A perusal of the impugned order would show that *qua* the detenu, seven (7) adverse cases have been noted; These being: Crime Nos.1203 of 2015, 504 of 2017, 749 of 2017, 512 of 2017, 565 of 2017, 1053 of 2017 and 1043 of 2017.

3. Of the seven (7) adverse cases, one case, i.e., Crime No.512 of 2017, is registered against the detenu under Section 457 and 380 of the IPC, while in the remaining six (6) cases, the

detenu has been booked under Section 379 of the IPC.

4. In the subject case, which is registered as Crime No.756 of 2017, the detenu has been booked under Sections 341,294(b), 336,427, 392 and 506(ii) of the IPC.

5. A perusal of the record would show that in connection with Crime No.756 of 2017, the detenu was arrested on 13.05.2017.

6. The detaining authority, in paragraph '4' of the impugned order, notes that, though, the detenu moved for bail in Crime No.756 of 2017, the same is pending adjudication by the concerned Court.

6.1. Insofar as the Crime Nos. 1043 of 2017, 504 of 2017, 749 of 2017, 1053 of 2017, 1203 of 2015, 512 of 2017 and 565 of 2017 are concerned, even according to the detaining authority, no bail application has been moved.

6.2. The detaining authority, however, appears to be of the view that in these cases, the relatives of the detenu may move for bail on behalf of the detenu.

6.3. Furthermore, the detaining authority also noted, in the impugned order, that in similar case, i.e., in Crl.M.P.No.3044 of 2015, bail was granted by the Court of Principal and Sessions Judge, Thiruvallur. Based on this, the detaining authority has entertained an apprehension that there is a real possibility of the detenu being released on bail.

7. Having heard the submissions advanced by the learned counsel for the petitioner and the learned Additional Public Prosecutor and perused the record, we are of the view that the impugned order is flawed for the following reasons:

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- (i) First, even though the detenu was arrested on 13.5.2017, the impugned order of detention was passed on 02.06.2017. Clearly, there is a substantial delay in passing the impugned order.

(ii) Second, according to the detaining authority, in Crime No.756 of 2017, the bail application filed by the detenu is pending.

(iii) Third, Insofar as the adverse cases are concerned (to which we have made a reference above), concededly, at the time when the impugned order was passed, no bail application had been moved by the detenu.

(iv) Lastly, the fact that relatives may move bail application and that, in a similar case pertaining to the 2015, bail was granted, in our view, cannot be the reason for the detaining authority to entertain an apprehension that there was a real and imminent possibility of the detenu being enlarged on bail.

8. For the foregoing reasons, we are inclined to quash the impugned order. It is ordered accordingly.

9. The detenu shall be released forthwith, unless he is

required to remain in custody in 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.

(R.S.A.,J)

(N.S.K.,J)

08.11.2017

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Index: Yes/No

Internet: Yes

Note to office:

1. Issue copy today itself
2. Copy to be communicated to the concerned Jail Superintendent via fax

To

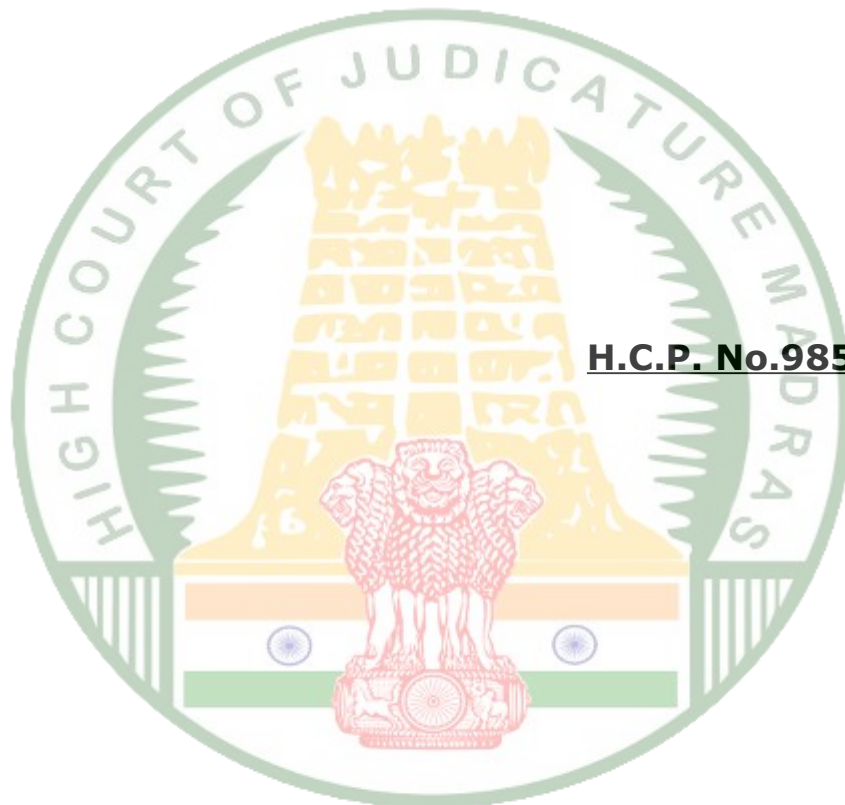
1. The Secretary, Home Prohibition and Excise Department
Fort.St.George, Chennai -600 009
2. The Commissioner of Police
The Commissioner office
Vepery, Chennai -600 007
3. The Joint Secretary,
Public (Law and order)
Secretariat, Fort St.George, Chennai.
4. The Superintendent
Central Prison, Puzhal, Chennai
5. The Public Prosecutor, High Court, Chennai.

RAJIV SHAKDHER, J.

and

N.SATHISH KUMAR, J.

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