

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2018

Coram

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

H.C.P.No.1523 of 2017

Mrs.Kuppulakshmi

... Petitioner

Vs.

- 1.State of Puducherry represented
by the Secretary to Government
Home, Prohibition and Excise Department
Puducherry.
- 2.The District Collector and
District Magistrate
Puducherry District,
Puducherry.
- 3.The Secretary to Government,
Government of India
Ministry of Home Affairs
(Department of Internal Security)
North Block,
New Delhi - 100 001.
(R3 is impleaded as per the order of
this Court dated 18.09.2017 made in
Crl.M.P.No.11156 of 2017 in H.C.P.No.1523 of 2017)

.. 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 passed by the second respondent pertaining to the order made in No.07/DM/RO/D2/PPASAA/2017 dated 29.06.2017 in detaining the detenu under Section 2 © of the Puducherry Prevention of Antisocial Activities Act, 2008 (Act No.10 of 2010) as a "Dangerous Person" and quash the same and direct the respondents to produce the detenu Sarath @ Sarath Kumar, son of Singaravel, aged about 24 years, who is detained at Central Prison, Kalapet, Puducherry before this Court and set him at liberty.

For Petitioner : Mr.D.Prasanna

For Respondents : Mr.Bharatha Charavarthy
Public Prosecutor (Puducherry)
for R1 & R2
Mr.S.Arockiam for R3

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

1. This is a petition, whereby challenge is laid to the detention order dated 29.06.2017.

2. A perusal of the impugned order would show that there are three (3) adverse cases registered against the detenu. These being : Crime No.33 of 2017; Crime No.38 of 2013; and Crime No.70 of 2017. Out of three (3) cases, first two (2) cases are pending trial, and the third case is under investigation.

3. Admittedly, the detenu was arrested on 17.02.2017.

4. We have heard the learned counsel for the petitioner as well as Mr.Bharatha Chakavarthy, the learned Public Prosecutor Puducherry. We have also perused the record. According to us, the impugned order deserves to be quashed on the following grounds:

(i) First, though the detenu was arrested on 17.02.2017, the detention order was passed after a delay of more than four (4) months i.e., on 29.06.2017. In the counter affidavit, there is no explanation for the delay in passing the impugned order. Resultantly, the delay in passing the detention order remains unexplained.

(ii) Second, the impugned order shows that the bail petitions moved by the detenu in Crime No.33 of 2017 and Crime No.70 of 2017 were pending, on the date when the impugned order was passed. The Detaining Authority, however, has come to the conclusion that the detenu was likely to be released on bail, because bail petitions were pending. According to us, the conclusion is flawed, as bail is granted by Court, by looking to various factors, including the gravity of the offence, the ability of the accused to suborn witnesses and the possibility of the accused fleeing from justice.

(ii)(a) Furthermore, we are also informed by the learned Public Prosecutor (Puducherry) that the copy of the bail petition was not furnished to the detenu.

5. Thus, for the foregoing reasons, we are, as indicated above, inclined to quash the impugned order. It is directed accordingly.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.07/DM/RO/D2/PPASAA/2017 dated 29.06.2017, passed by the second respondent is set aside. The detenu, namely, Sarath @ Sarath Kumar, S/o.Singaravel, male, aged about 24 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 VI)

/true copy/

Sub Asst. Registrar

To

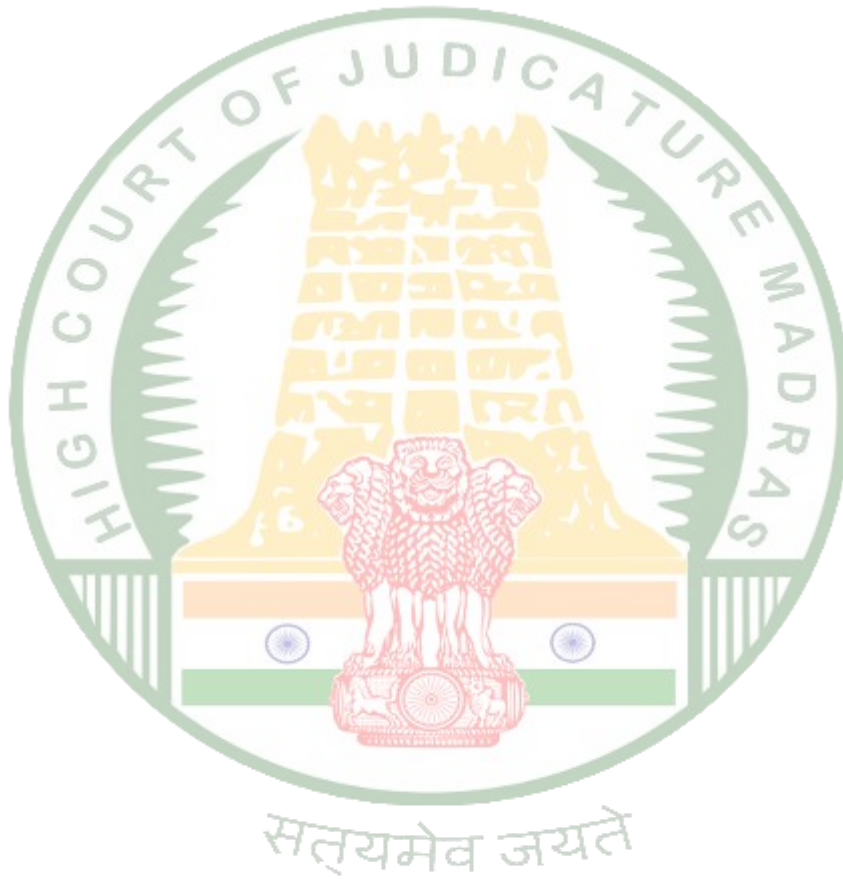
- 1.The Secretary to Government of Puducherry
Home, Prohibition and Excise Department
Puducherry.
- 2.The District Collector and
District Magistrate
Puducherry District,
Puducherry.
- 3.The Secretary to Government,
Government of India
Ministry of Home Affairs
(Department of Internal Security)
North Block,
New Delhi - 100 001.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Superintendent, (BY FAX)
Central Prison,
Kalapet, Puducherry.
[In duplicate for communication to the detenu]

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

+lcc to Mr.S.Arockiam, Advocate sr.1087

H.C.P.No.1523 of 2017

nr 08/01/2018



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