

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.2153 of 2017

Silonmani

... Petitioner

Vs.

1.The District Collector and District Magistrate
Cuddalore District,
Cuddalore.

2.The Secretary to the Government of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in C3/D.O/58/2017 on the file of the first respondent, quash the detention order dated 09.10.2017 and direct the production of the detenu Ramu & Ramalingam, aged 28 years, son of Nagappan, presently detained at the Central Prison, Cuddalore, under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondents : Mr.V.M.R.Rajentran,
Additional 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 09.10.2017.

2. A perusal of the detention order shows that four (4) adverse cases, have been noted, qua the detenu. These being : Crime No.393 of 2017; Crime No.485 of 2017; Crime No.515 of 2017; and Crime No.772 of 2017. In all these cases, the detenu has been booked under Sections 4(1)(aaa) & 4(1-A) of the TNP Act.

3.Insofar as the ground case is concerned, which is registered as Crime No.775 of 2017, the detenu has been booked

under the very same sections of the TNP Act.

4. The record shows that the detenu was arrested on 22.09.2017.

5. We have heard the learned counsel for the petitioner as well as Mr.Rajentran, the learned Additional Public Prosecutor. We have also perused the record.

6. We are of the view that the impugned order is flawed for the following reasons:

(i) First, though the detenu was arrested on 22.09.2017, the detention order was passed only on 09.10.2017. Notice in this petition was issued on 16.11.2017, despite which, the State has not filed a counter affidavit. Resultantly, the delay in passing the detention order remains unexplained.

(ii) Second, even though the Detaining Authority noted the fact that the detenu's bail petition in CrI.M.P.No.4146 of 2017, was pending, on the date when the impugned order was passed, it came to an erroneous conclusion, in our opinion, that the detenu was likely to be enlarged on bail. This conclusion was reached on the basis of the result in another similar case. In our view, there was a total non-application of mind, as bail is granted by the concerned Court not because, there is parity in provisions, but taking into account the various factors, which includes the gravity of the offence, the ability of the accused to suborn witnesses and the likelihood of the accused fleeing from justice.

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

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O/58/2017 dated 09.10.2017, passed by the first respondent is set aside. The detenu, namely, Ramu @ Ramalingam, S/o.Nagappan, male, aged about 28 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-VI)

//True Copy//

Sub Assistant Registrar

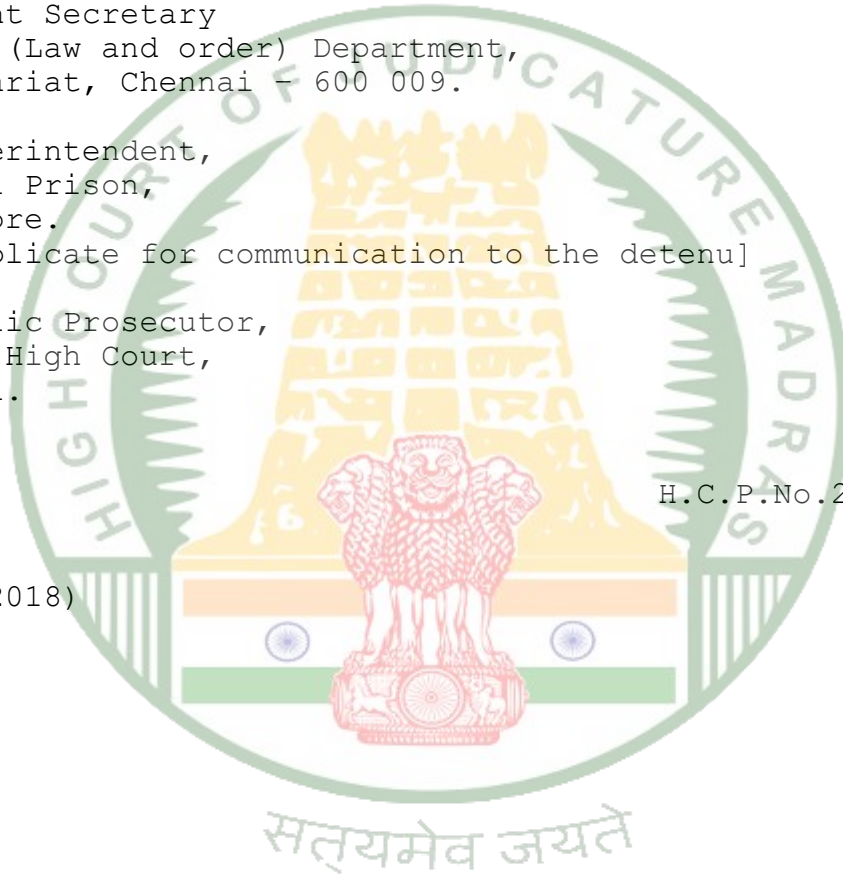
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To

- 1.The District Collector and District Magistrate
Cuddalore District,
Cuddalore.
- 2.The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai.
- 3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 4.The Superintendent,
Central Prison,
Cuddalore.
[In duplicate for communication to the detenu]
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.2153 of 2017

KAN(CO)
TR(08/01/2018)



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