

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1578 of 2018

Mrs.Syed Meharaj
W/o.M.Mujubur Rahaman

... Petitioner

-vs-

1.The Commissioner of Police,
Greater Chennai, Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai 600 007.

2.The Government of Tamil Nadu
Rep. By its Principal Secretary,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.

3.The Superintendent of Central Prison,
Puzhal, Chennai.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records of the first respondent relating to detention order bearing No.BCDFGISSSV No.509, dated 11.07.2018 and quash the same and direct the respondents to produce the body of the detenu M.Mujubur Rahaman, Son of Meeran Kani, now detained in the Central Prison, Puzhal, Chennai under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,

Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.M.Abdul Nazeer

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu Mujubur Rahaman S/o.Meeran Kani, who has been branded as a 'Video Pirate' under the Tamil Nadu Act 14 of 1982 and detained under order of first respondent passed in BCDFGISSSV No.509/2018 dated 11.07.2018.

2. The alleged ground case has been registered against the detenu in CCB Crime No.287 of 2018 on the file of Central Crime Branch, for offences u/s.52(A), 68(A), 51 r/w 63(a) & 65 of Copy Right Act, 1957 and 292 (2)(a) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. The detaining authority while noticing that the detenu was remanded

in the ground case and the bail application moved by the detenu in Crl.M.P.No.2944/2018 on the file of learned Chief Metropolitan Magistrate, Egmore, Allikulam, is pending, he had informed that in a similar case bail has been granted by learned Chief Metropolitan Magistrate, Egmore, Allikulam, Chennai, in X Crime No.253/2015 dated 10.07.2015 and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

‘5(ii). ... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The “similarity case” yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.’

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the first respondent, detaining the detenu Mujibur Rahaman S/o.Meeran Kani in BCDFGISSSV No.509/2018 dated 11.07.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

[C.T.S., J] [M.N.K., J]
24.10.2018

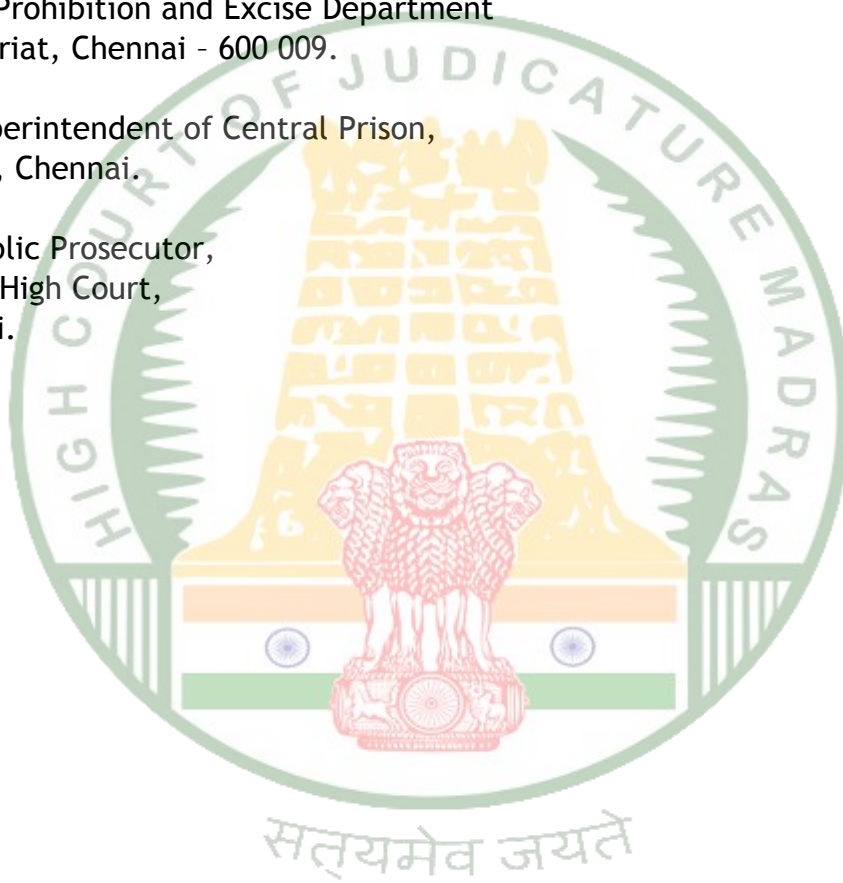
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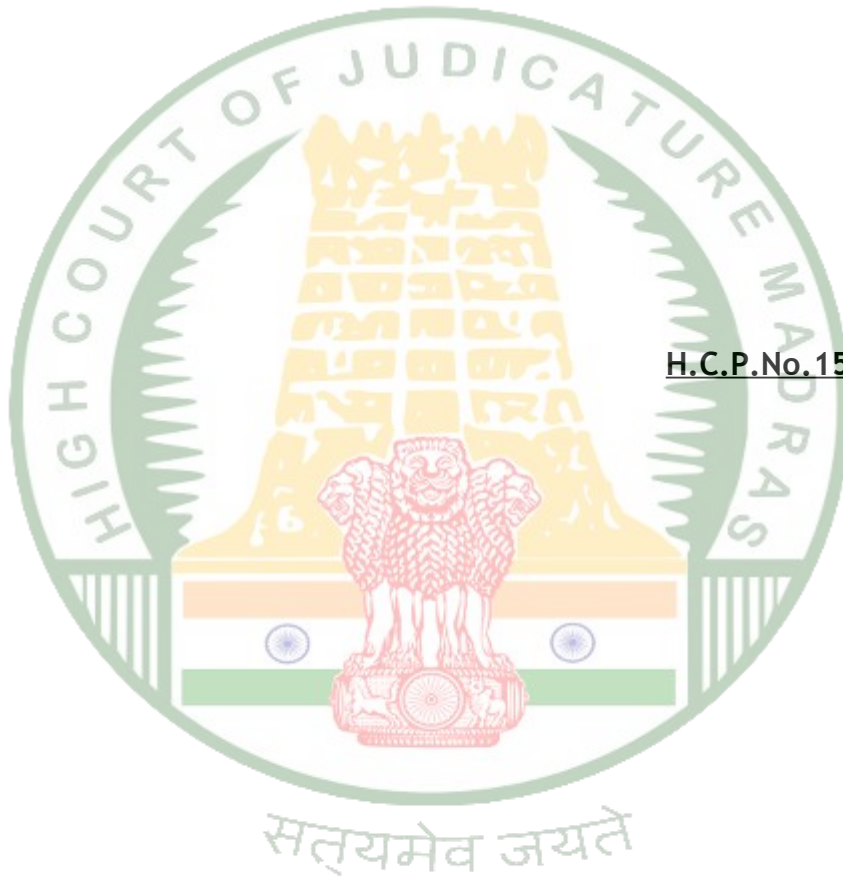
- 1.The Commissioner of Police,
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- 2.The Secretary,
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- 3.The Superintendent of Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court,
Chennai.



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C.T.SELVAM, J
and
M.NIRMAL KUMAR, J

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