

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2018

Coram

THE HON'BLE MR.JUSTICE C.T.SELVAM

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2223/2017

Mrs.Gayathri ... Petitioner/Wife of the detenu

Vs.

1.The Secretary to the Government,
Prohibition, Home & Excise Department,
Fort St George, Chennai - 600 009.

2.District Collector & District Magistrate
Vellore District, Vellore District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records relating to the proceedings of the 2nd respondent herein C3.D.O.No.109/2017 dated 31.10.2017 and set aside the same and produce the detenu Thiru Jeeva @ Jeeva Tamilvanan, aged 27 years, son of Ravanan, TPDA No.7313, now detained at Central Prison, Vellore, Vellore District, before this Court and set him at liberty.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondents : Mr.V.M.R.Rajentran, APP

ORDER

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

This is a petition, which seeks to assail the detention order dated 31.10.2017.

2 A perusal of the impugned order shows that one adverse case has been noted qua the detenu. This being Crime No.526/2017.

3 The record also shows that the detenu was arrested on 27.09.2017. Furthermore, the Detaining Authority, has noted in the impugned order that insofar as the subject case is concerned, which is registered as : Crime No.529 of 2017, the bail petition moved by the detenu in that case was pending, on the date, when the impugned order was passed. Despite this circumstance obtaining, the Detaining Authority has come to the conclusion that the detenu was likely to be released on bail, based on the result achieved in a "similar case" registered as Crime No.200 of 2017.

4 We have heard the learned counsel for the petitioner as well as Mr.V.M.R.Rajentran, the learned Additional Public Prosecutor. We have also perused the record. According to us, the impugned order cannot be sustained for the following reasons:

(i) First, even though the detenu was arrested on 27.09.2017, the impugned order was passed after a delay of more than one (1) month i.e., on 31.10.2017. Notice in this petition was issued on 23.11.2017, despite opportunity having been granted, no counter affidavit has been filed. Resultantly, the delay in passing the impugned order remains unexplained.

(ii) Second, on the date, when the impugned order was passed, the bail petition filed by the detenu in Crime No.529 of 2017 was pending adjudication. Therefore, according to us, the Detaining Authority, could not have come to the conclusion that there was likelihood of the detenu being released on bail, merely because, in a similar case, bail had been granted. Bail is granted not because of similarity in provisions, but by looking to various factors, including the gravity of the offence, the ability of the accused to suborn witnesses, and the likelihood of the accused fleeing from justice.

5 Thus, having regard to the foregoing reasons, as indicated above, we are 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 C3.D.O.No.109/2017 dated 31.10.2017, passed by the second respondent is set aside. The detenu, namely, Jeeva @ Jeeva Tamilvanan, S/o.Ravanan, male, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with another case.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

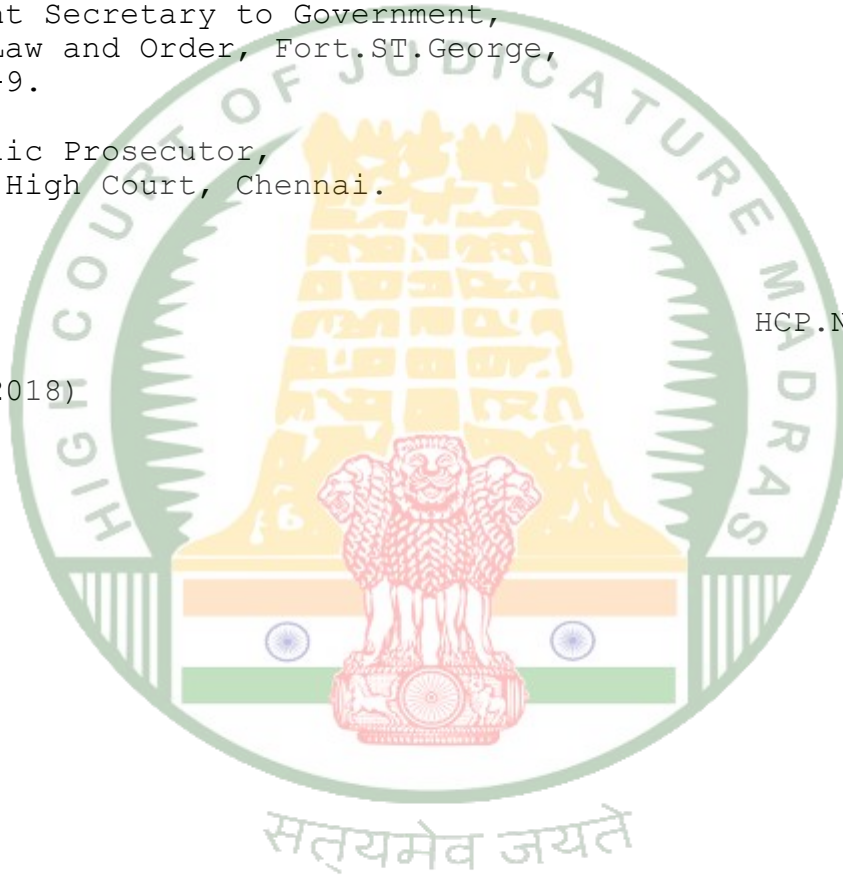
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To

- 1.The Secretary to the Government,
Prohibition, Home & Excise Department,
Fort St George, Chennai - 600 009.
- 2.District Collector & District Magistrate
Vellore District, Vellore District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary to Government,
Public Law and Order, Fort.ST.George,
Chennai-9.
- 5.The Public Prosecutor,
Madras High Court, Chennai.

SR(CO)
GN(06/02/2018)

HCP.No.2223/2017



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