

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MS.JUSTICE K.B.K.VASUKI

H.C.P. NO.2739 OF 2014

Ulliyappa

.. Petitioner

vs.

1.State of Tamil Nadu, rep. By its
Secretary to Government,
Home, Prohibition & Excise Dept.,
Fort St. George, Chennai.

2.The District Collector & District Magistrate,
Krishnagiri Dist.

3.The Superintendent,
Central Prison, Salem.

.. Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.B.Vasudevan

For respondents : Mr.C.Emalias, APP

O R D E R

This Habeas Corpus Petition is filed by the father of the detenu, namely, Nagaraj, son of Ulliyappa, aged about 28 years, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.39/2014 dated 1.9.2014, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) of 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 14/1982) the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Salem, and to quash the same and to direct the respondents to produce the body of the detenu and to set him at liberty forthwith.

2.Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-application of mind on the part of the detaining authority, while passing the impugned order of detention, thereby vitiating the detention.

3. Per contra, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention.

4. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. In paragraph No.4 of the grounds of detention, it has been stated that the detenu had filed a bail application in CrI.M.P.No.2123/2014 before the Principal Sessions Court, Krishnagiri, in respect of Hosur Town P.S.Cr.No.322/2014, and that the said application had been dismissed on 26.8.2014. It has been further stated that the detenu had not filed any bail application in respect of Hosur Town P.S. Cr.No.330/2014; however, it has been further stated that the relatives of the detenu are taking steps to move bail applications to take him on bail. But, the detaining authority, without any cogent material available on record and by relying on the statement of the Sponsoring Authority that the relatives of the detenu are taking steps to take him on bail, has arrived at the conclusion that there is a real possibility for the detenu to come out on bail, by filing a bail application before the higher courts. Merely stating that steps have been taken on behalf of the detenu by his relatives to file bail applications is not sufficient to pass an order of detention. Except the statement that the relatives of the detenu are taking steps to file bail applications, there is no other material as to the steps taken to file bail applications. When no bail application is filed, there is no real possibility of the detenu coming out on bail. The above finding of the detaining authority is based on mere surmises and conjectures. In the absence of any materials on record, on the basis of which, the detaining authority could be satisfied that the detenu was likely to be released on bail, the mere ipse-dixit of the detaining authority is not sufficient to sustain the order of detention and would vitiate the impugned order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Thus, the non-application of mind on the part of the detaining authority in this aspect necessitates interference by this Court and accordingly the order of detention is liable to be quashed.

6. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

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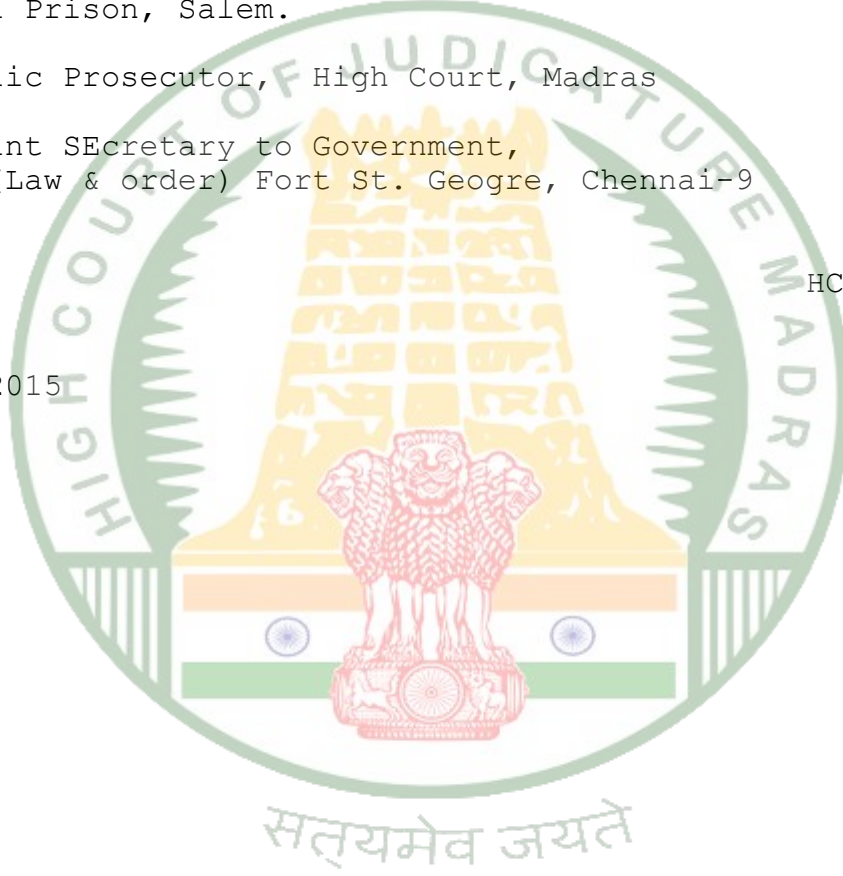
Sub Assistant Registrar

To:

- 1.State of Tamil Nadu, rep. By its
Secretary to Government,
Home, Prohibition & Excise Dept.,
Fort St. George, Chennai.
- 2.The District Collector & District Magistrate,
Krishnagiri Dist.
- 3.The Superintendent,
Central Prison, Salem.
- 4.The Public Prosecutor, High Court, Madras
5. The Joint SEcretary to Government,
Public (Law & order) Fort St. Geogre, Chennai-9

HCP.No.2739/2014

ALA(CO)
Eu 17.04.2015



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