

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.3252/2015

Priya

.. Petitioner

Vs

1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009

2.The District Collector and District Magistrate,
Salem, Salem District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the entire records in C.M.P.No.53/GOONDA/C2/2015 dated 12.12.2015 on the file of the District Collector and District Magistrate, Salem, Salem District and quash the same as illegal and direct the respondent to produce the detenu Jothivel @ Arun, aged about 30 years, now confined at Central Prison, Salem and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu
for Mr.S.Rajanikanth

For Respondents : Mr.A.N.Thambidurai
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.JAICHANDREN, J.]

The petitioner is the wife of the detenu-Jothivel @ Arun, son of Velu, aged 26 years, who has been detained under Act 14 of 1982, on the orders of the second respondent, by his proceedings, in CMP.No.53/GOONDA/C2/2015, dated 12.12.2015. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. It is seen from the records that as against the detenu, there were two adverse cases pending as follows:

(1) Attur Police Station Crime No.351/2015 under Section 392 of I.P.C.;

(2) Attur Police Station Crime No.715/2015 under Section 392 of I.P.C.

4. Admittedly, the detenu was arrested and remanded to judicial custody in the ground case in Attur Police Station Crime No.721/2015, for offences under Sections 392, 397 and 506(ii) I.P.C. and he has filed a bail application before the Principal Sessions Judge, Salem, in CMP. No.3680/2015 and the same was dismissed, on 30.11.2015. Further, though, in a similar case, registered at Hasthampatty Police Station, Crime No.555/2014 under Section 392 read with 397 and 506(ii) of I.P.C., bail was granted to the co-accused Veerappan @ Vinothkumar, by the learned Principal District and Sessions Judge, Salem, in C.M.P.No.3972/2014, on 03.11.2014, the detenu has not filed any bail application, in this crime number, so far. The detaining authority had not considered that there was no bail granted to the detenu in connection with the other two adverse cases and no fresh bail application was filed in Attur Police Station Crime No.721/2015 for offences under Sections 392, 397 and 506(ii) IPC. The Detaining Authority has stated that there was imminent possibility of the detenu coming out on bail. It is not known as to how the detaining authority had come to such a conclusion, without considering the fact that, the detenu was in judicial remand in connection with three other cases. This only shows the non-application of mind, on the part of the detaining authority. Therefore, the detention order is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 12.12.2015, passed by the second respondent is set aside. The detenu is directed to be released, forthwith, unless his presence is required in connection with any other case.

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Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

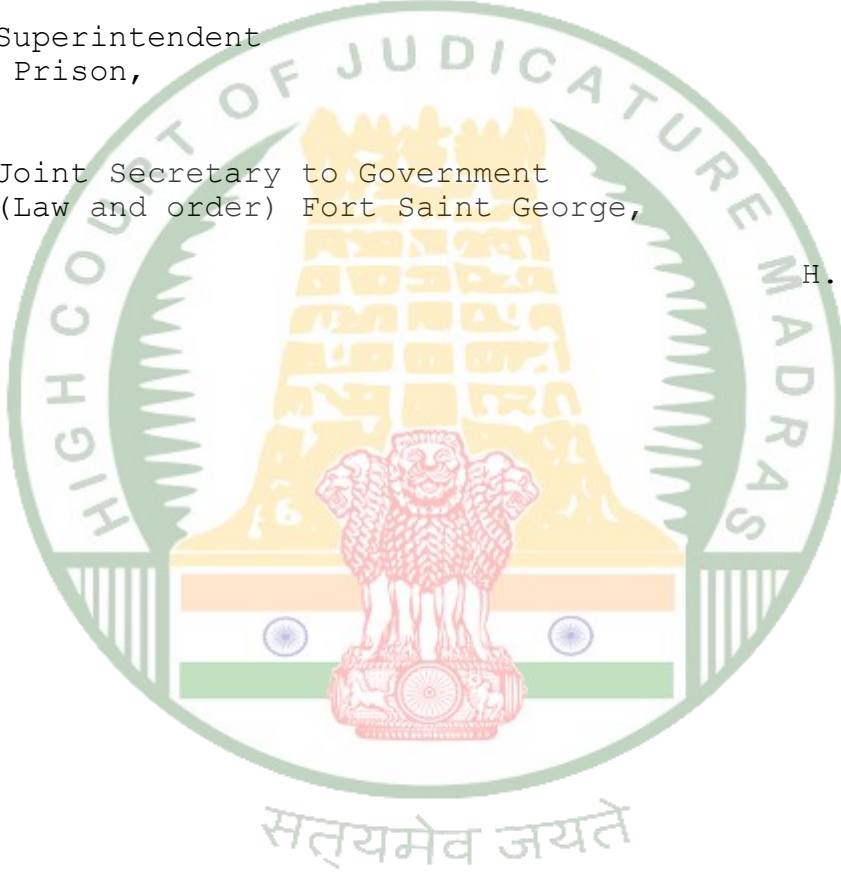
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To

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009
- 2.The District Collector and District Magistrate,
Salem, Salem District.
- 3.The Additional Public Prosecutor,
High Court, Madras.
4. The Superintendent
Central Prison,
Salem
5. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai

H.C.P.No.3252/2015

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