

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1243 of 2017

Mrs.R.Malarkodi

.. Petitioner

Vs.

1. The Principal Secretary to the Government
Home and Prohibition and Excise Department
Chennai-09.

2. The Commissioner of Police,
Greater Chennai,
Chennai.

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

4. The State rep.by Inspector of Police,
M1, Madhavaram Police Station,
Chennai.

5.The Inspector of police,
M-8, Sathangadu police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to call for the records vide Order No.277/BCDFGISSSV/2017 dated 18.05.2017 on the file of the second respondent herein and set aside the same and produce the petitioner's son Sabapathy aged 24 years S/o Rajendran, now confined at Central Prison II, Puzhal, Chennai and set him at liberty.

For Petitioner : Mr.M. Aswin

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

Addl. Public Prosecutor

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

1. The petitioner is the mother of the detenu, i.e., R. Sabapathi, Male, aged about 24 years. The detenu has been detained by the second respondent by his order in No.277/BCDFGISSSV/2017 dated 18.05.2017, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel for the petitioner would submit that the detaining authority while considering Cr.No.151 of 2017 u/s 392 IPC that the detenu was arrested, remanded and subsequently enlarged on bail, such materials has not been placed before the detaining authority and without those materials the detaining authority has arrived at a conclusion that there is real possibility of the detenu coming out on bail Cr.Nos.873 of 2017 and 891 of 2017 also.

5. The learned counsel would further submit that the detaining authority has relied upon the case in Cr.No.873 of 2017 while passing the detention order. But in the tamil translated copy of detention order the Crime number mentioned as 873 of 2016, which in fact deprived the right of the detenu to give proper explanation and representation before the detaining authority. All these facts squarely established the non application of mind of the detaining authority.

6. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

7. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in the ground case in Cr.No.891 of 2017, no fresh bail application has been filed so far. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real

possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that when no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. Further, the facts involved in the case relied on by the detaining authority as a similar case are totally different. Furthermore, in the tamil translated copy of detention order, the Crime number of 873 of 2017 has wrongly mentioned as 873 of 2016, which deprived the right of the detenu to make a proper representation before the the detaining authority. In such view of the matter, the impugned detention order is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.277/BCDFGISSSV/2017, dated 18.05.2017, passed by the second respondent is set aside. The detenu, i.e., Tr. Sabapathi, aged about 24 years S/o Rajendran, is directed to be released forthwith unless his detention is required in connection with any other 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/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ggs

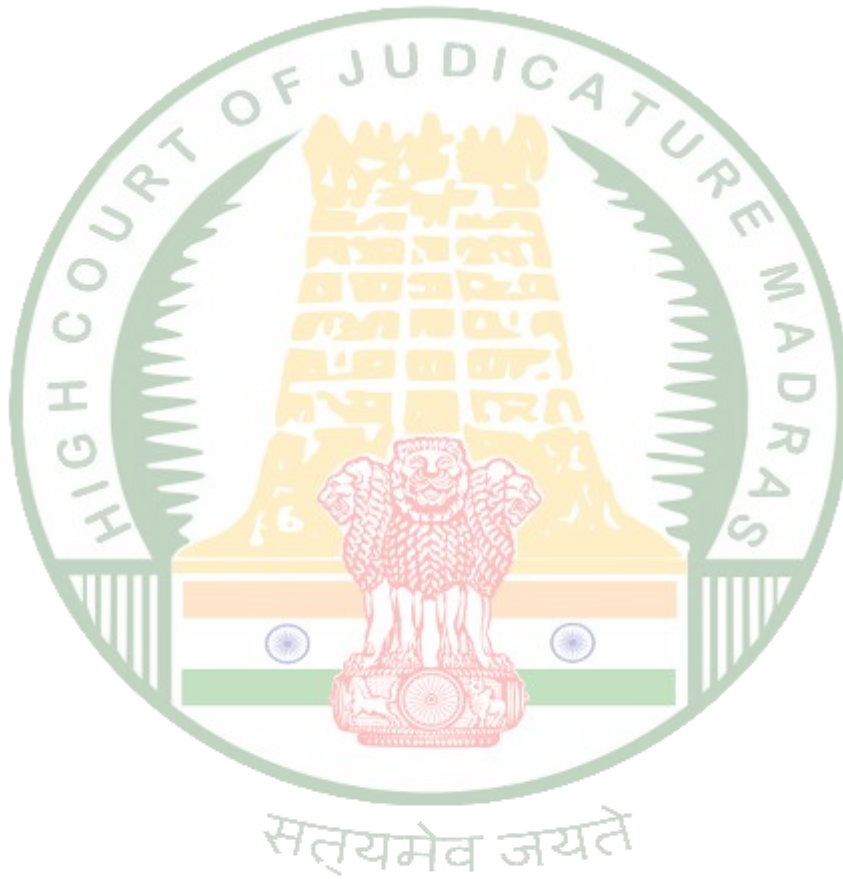
To

1. The Principal Secretary to the Government
Home and Prohibition and Excise Department
Chennai-09.
2. The Commissioner of Police,
Greater Chennai, Chennai.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
(In duplicate for Communication to detenu)
4. The Additional Public Prosecutor
High Court, Madras.
5. The Inspector of police,
M-8, Sathangadu police Station,
Chennai.

6. The Inspector of Police,
M1, Madhavaram Police Station,
Chennai.

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SJ(CO)
NR 09/10/2017



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