

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1291 of 2017

Thamilarasi

... Petitioner

-Vs-

State represented by its

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariate, Fort St.George, Chennai - 600 009
2. The Commissioner of Police
Salem City, Salem ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in C.M.P.No.47/Goonda/Salem City/2017 dated 07.07.2017 on the file of the Commissioner of Police, Salem City, Salem and quash the same as illegal and direct the respondent to produce the detenu Devamoorthy @ Murukki, S/o.Periyasamy, aged about 25 years now confined at Central Prison, Salem and set him at liberty.

For Petitioner : Mr.S.Sengkodi

For Respondents : Mr. V.M.R.Rajentran
Additional Public Prosecutor

O R D E R

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

The petitioner is the mother of the detenu, namely, Devamoorthy @ Murukki, S/o.Periyasamy, Male, aged about 25 years. The detenu has been detained by the 2nd respondent by his order in C.M.P.No.47/Goonda/Salem City/2017 dated 07.07.2017, holding him to be a " Goonda", as contemplated under 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. The learned counsel for the petitioner would submit that the Detaining Authority has passed the order of detention on the ground that in the similar case in Crime No.246 of 2012, on the file of Salem Town Crime Police Station, bail was granted to the co-accused and hence, there is imminent possibility of the detenu to come out on bail in the said case. However, no bail application has been filed by the petitioner so far. Hence, it is submitted that the Detaining Authority has passed the order of detention mechanically without application of mind.

4. 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.

5. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending in the adverse cases and the ground case. 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. In that case, stringent condition was imposed while granting bail. In such view of the matter, the impugned detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.47/Goonda/Salem City/2017 dated 07.07.2017, passed by the 2nd respondent is set aside. The detenu, namely, Devamoorthy @ Murukki, S/o.Periyasamy, Male, aged about 25 years, 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/-
Assistant Registrar(CS V)

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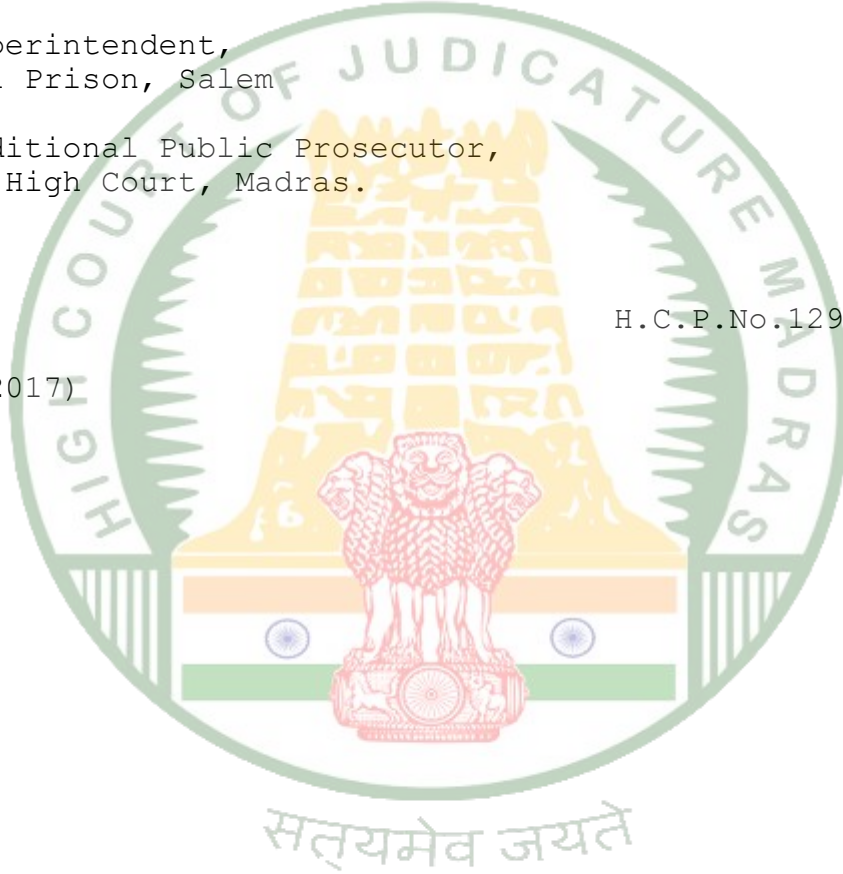
Sub Assistant Registrar

To:

1. The Secretary
Prohibition and Excise Department (Home)
Fort. St.George, Chennai - 600 009
2. The Joint Secretary
Prohibition and Excise Department (Law & Order)
Fort. St.George, Chennai - 600 009
3. The Commissioner of Police
Salem City, Salem
4. The Superintendent,
Central Prison, Salem
5. The Additional Public Prosecutor,
Madras High Court, Madras.

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