

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2017

Coram

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

H.C.P.No.1371 of 2017

Sarasu

... Petitioner

Vs.

State Rep. By

1.The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariate, Fort St. George,
Chennai-9.

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 upon the production of the records in C.M.P.No.48/GOONDA/SALEM CITY/ 2017 dated 11.07.2017 on the file of the 2nd respondent and quash the same as illegal and direct the respondent to produce the detenu, Sotta Karthi @ Karthi, S/o.Venkatachalam, aged about 26 years, now confined at Central Prison, Salem and set him at liberty.

For Petitioner : Ms.S.Sengkodi

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

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सत्यमेव जयते

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, Sotta Karthi @ Karthi, Son of Venkatachalam, male aged about 26 years. The detenu has been detained by the second respondent by his order in C.M.P.No.48/Goonda/Salem City/2017 dated 11.07.2017, 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 made only one submission that though the detention order proceeds to state that steps are being taken by the relatives of the petitioner to file the bail application, the said statement is bereft of requisite particulars.

4. Though notice was taken as far back as on 31.07.2017, no counter-affidavit has been filed to date. The learned Additional Public Prosecutor 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, the detenu has not filed any bail application in respect of Crime No.344 of 2017 (ground case). However, the Detaining Authority, came to such conclusion stating that the relatives of the detenu are taking efforts to move bail application, which is nothing but a non-application of mind. Similarly, the detaining authority considered the similar case, which is no way connected with the detenu, to infer such conclusion, which also exhibits the non-application of mind on the part of the detaining authority. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Therefore, on this ground, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.48/Goonda/Salem City/2017 dated 11.07.2017 passed by the second respondent is set aside. The detenu, namely, Sotta Karthi @ Karthi, Son of Venkatachalam, male aged about 26 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/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariate, Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Salem City, Salem.

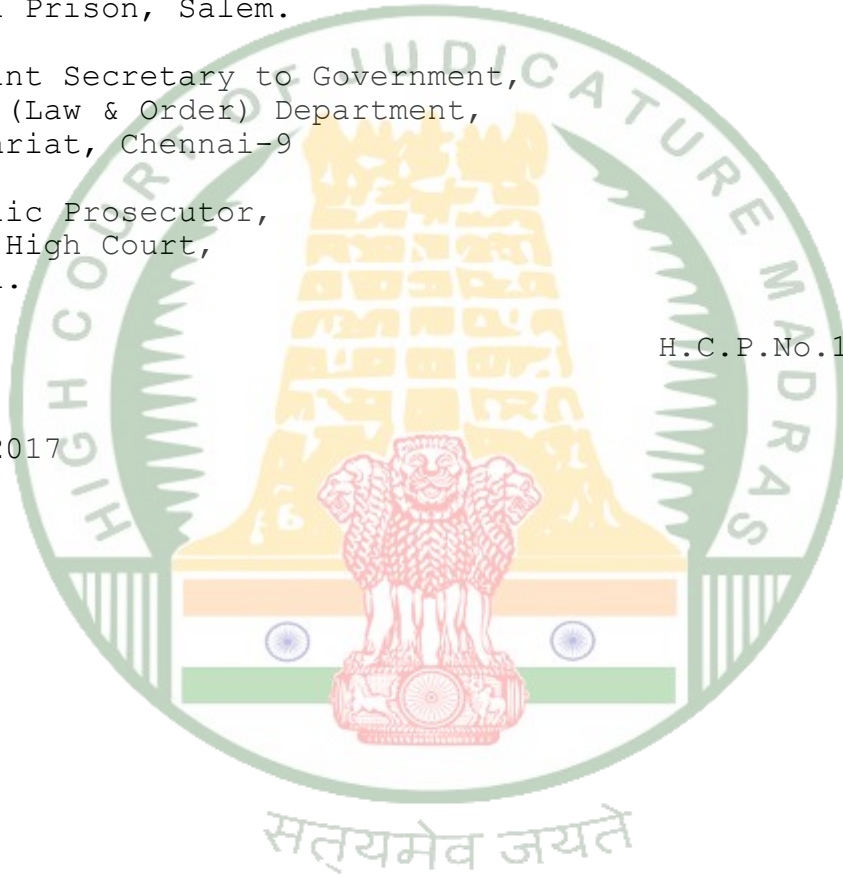
3.The Superintendent,
Central Prison, Salem.

4. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-9

5.The Public Prosecutor,
Madras High Court,
Chennai.

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