

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.1383 of 2017

Rajendran

... Petitioner

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

2. Commissioner of Police,
Greater Chennai Police.

... 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 passed by the second respondent dated 13.07.2017 in memo No.419/BCDFGISSSV/2017 against the petitioner brother's son Kumar @ Kulla Kumar, Male aged 41 years S/o.Chinnathambi who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 paternal uncle of the detenu, namely, Kumar @ Kulla Kumar, Son of Chinnathambi, male aged about 41 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.419/2017 dated 13.07.2017, 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 01.08.2017, 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 S-15 Selaiyuar PS Crime No.836 of 2017 (first adverse case). However, the Detaining Authority, came to the conclusion that the relatives of the detenu are taking efforts to move bail application in the said case, which is nothing but a non-application of mind. Though the detaining authority has made reliance on similar cases in which accused were granted bail, the facts involved in those cases are different. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail in the first adverse case 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 BCDFGISSSV No.419/2017 dated 13.07.2017 passed by the second respondent is set aside. The detenu, namely, Kumar @ Kulla Kumar, Son of Chinnathambi, male aged about 41 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 II)

//True Copy//

Sub Assistant Registrar

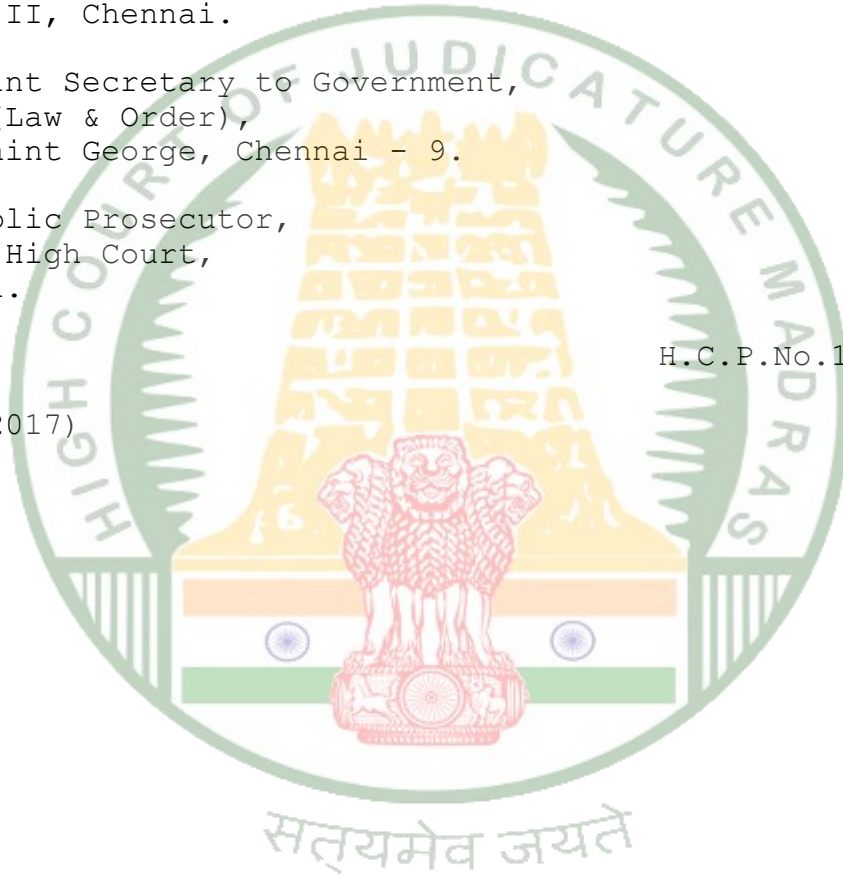
sra

To

1. The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariate, Fort St. George,
Chennai-9.
2. The Commissioner of Police,
Greater Chennai Police.
3. The Superintendent,
Central Prison,
Puzhal II, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1383 of 2017

RK(CO)
CA(25/10/2017)



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