

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.10.2017

Coram

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

H.C.P.No.1404 of 2017

Rajendiran

... Petitioner

Vs.

State, rep. By

1. The Secretary to Govt.,
Home, Prohibition and Excise Dept.,
Secretariat, 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 upon the production of the records passed by the second respondent dated 11.07.2017 in C.M.P.No.49/Goonda/Salem City/2017 against the detenu Vaithi @ Vaitheeswaran, Male aged 25 years, S/o.Rajendiran, who is confined at Central Prison, Salem 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 : Ms.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 father of the detenu, namely, Vaithi @ Vaitheeswaran, male aged about 25 years. The detenu has been detained by the second respondent by his order in C.M.P.No.49/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 the detention order has been passed by the detaining authority without application of mind inasmuch as when no bail application was moved by the detenu, relying on the similar case where bail was granted to some other accused in the year 2012 and considering that the relatives of the detenu are taking efforts to move bail application, the detention order has been passed against the detenu, which is nothing but a non-application of mind and on this ground alone, the order of detention is vitiated.

4. 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 despite the fact that no bail application was pending in respect of the ground case, the detaining authority, considering the similar case where bail was granted in the year 2012, which is five years prior to the alleged occurrence, inferred that there is likelihood of his coming out on bail, since his relatives are taking efforts to move bail application. Such a conclusion is nothing but a clear non-application of mind. On this ground alone, the detention order is liable to be quashed.

6. That apart, the detaining authority, in page 3 of the detention order in connection with the second adverse case, has mechanically noted the date of occurrence as 26.07.2017, instead of 26.07.2016.

7. Furthermore, despite notice being ordered in this petition on 02.08.2017, no counter-affidavit has been placed before this Court to date.

8. For all these reasons, we are inclined to allow this habeas corpus petition.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.49/Goonda/Salem City/2017 dated 11.07.2017 passed by the second respondent is set aside. The detenu, namely, Vaithi @ Vaitheeswaran, Son of Rajendiran, 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 III)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Government,
Home, Prohibition and Excise Dept.,
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),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
Madras High Court,
Chennai.

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CA(27/10/2017)

H.C.P.No.1404 of 2017

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