

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1412 of 2017

K.Shanthi

... Petitioner

vs

1. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department (Home)
Fort St.George, Chennai – 600 009

2. The Commissioner of Police
Salem City

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records of the detention made in C.M.P.No.43/Goonda/Salem City/ 2017 dated 06.07.2017 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu Thiru. Kuppuraj S/o. Periyasamy, aged

about 38 years, now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.E.C.Ramesh

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 wife of the detenu, namely, Kuppuraj, S/o. Periyasamy, Male, aged about 38 years. The detenu has been detained by the 2nd respondent by his order in C.M.P.No.43/Goonda/salem city/2017 dated 06.07.2017, 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.

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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 similar case, in Crime No.1792 of 2011, bail was granted to the detenu and hence, there is imminent possibility of the detenu to come out on bail by filing bail application in this case also. 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 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 CMP.No.43/Goonda/Salem City/2017 dated 06.07.2017, passed by the 2nd respondent is set aside. The detenu, namely, Kuppuraj, son of Periyasamy, aged about 38 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.

[R. S. A., J.] [N. S. K., J.]

26.10.2017

Index : Yes / No

Internet : Yes / No

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Note to office:

Issue copy by today itself

order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To:

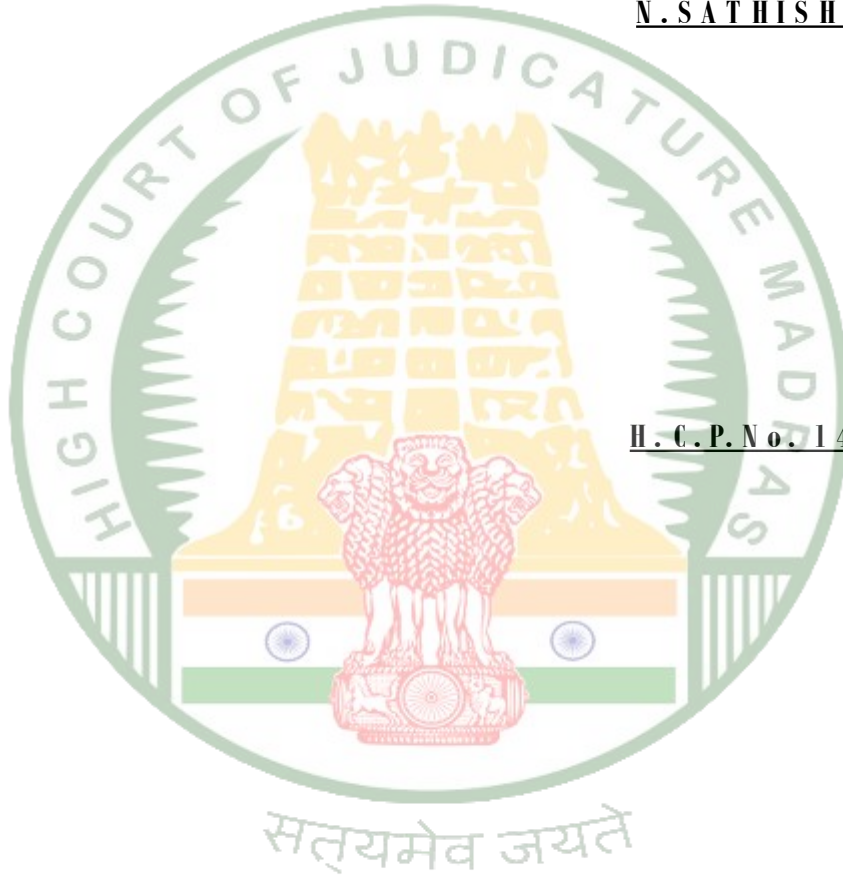
1. The Secretary to the Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department (Home)
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Salem City
3. The Superintendent,
Central Prison, Salem
4. The Joint Secretary (Public)
Law and Order Department
Fort St.George,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



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