

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM:

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

H.C.P.No.1524 of 2017

Anitha ... Petitioner/
Mother of the detenue

-vs-

State Rep by:-

1. State of Tamil Nadu,
Rep. by Secretary of State,
Prohibition & Excise Department,
Fort St.George, Chennai - 600 009.

2. The District Collector &
District Magistrate,
Vellore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the detention order dated 19.06.2017 made in detention order Memo No.C3.D.O.No.58/2017 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's son Silo @ Gopi @ Gopinath Son of Babu aged about 24 years branded as Goonda and now confined in Central Prison, Vellore District, before this Court and set him at liberty forth with.

For Petitioner : Mr.C.Mohanraj
for M/S.S.Paul Gnanamuthu

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, Thiru. Silo @ Gopi @ Gopinath , S/o Babu, Male, aged about 24 years.

The detenu has been detained by the 2nd respondent by his order in C3.D.O.No.58/2017, dated 19.06.2017, 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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel for the petitioner would submit that in the grounds of detention, English version the detaining authority in page No.11, para no.5 stated that the detenu was remanded in Arakkonam Town Police Station in Cr.No.226 of 2017 and the detenu moved the bail application before the Principal Sessions Judge, Vellore District in CrI.M.P.No.1676 of 2017 and the same was dismissed on 18.5.2017 and he had moved bail application in the same court and the same is pending and the same is pending and further the detaining authority stated that the it is very likely of detenu to coming out of bail, but the detaining authority did not produce any material evidence, so this is a non-application of mind on the part of the detaining authority while passing the order of detention, and therefore the detention order has to be quashed.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments 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.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Despite the fact that the bail petition filed by the detenu was dismissed on 18.5.2017 in Cr.M.P.No.1676 of 2017, thereafter further application for bail is pending before the same court for adjudication, whereas the detaining authority has considered the similar case on the same day. When the similar case bail was granted on the same day, the ground case was dismissed on the same court on the same day, the possibility of coming out out of bail is very remote. Therefore, inferring such conclusion merely shows the non application of mind on the part of the detaining

authority. Further, there is a delay in passing the detention order. Though the detenu was arrested on 15.4.2017 the detention order was passed only on 19.06.2017. The inordinate delay remains unexplained.

7. The detenu has moved bail application in Cr.No.226 of 2017 and the same is pending. But the detaining authority inferred that the steps may be taken by the detenu to get the bail order. Such a conclusion is merely non application of mind on the part of the detaining authority. When the bail application is dismissed and no subsequent bail application is pending, 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. Further notice was issued on 21.8.2017 to the respondents. But they have not filed any counter affidavit. All these facts would clearly show that there is a non application of mind on the part of the detaining authority. In such view of the matter, the impugned detention order is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3.D.O.No.58/2017, dated 19.06.2017, passed by the 2nd respondent is set aside. The detenu, namely, Thiru. Silo @ Gopi @ Gopinath, S/o Babu, Male, aged about 24 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

ggs

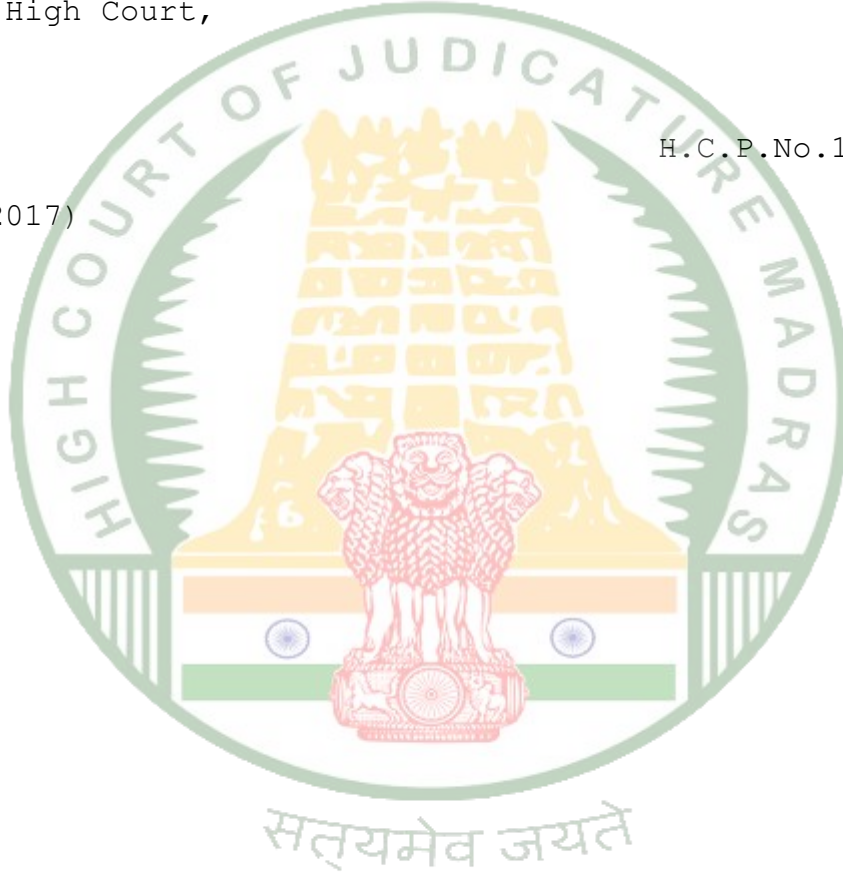
To:

1. The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department,
Fort St.George, Chennai - 600 009.

2. The District Collector &
District Magistrate,
Vellore District.
3. The Joint Secretary to Government ,
Public, Law and Order Department,
Secretariat, Chennai - 9.
4. The Superintendent,
Central Prison, Puzhal, Vellore.
5. The Public Prosecutor,
Madras High Court,
Madras.

H.C.P.No.1524 of 2017

VR(01/11/2017)



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