

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM:

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

H.C.P. No.1756 of 2017

Periyasamy

... Petitioner

-vs-

State Rep by

1.The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu,
Fort St. George
Chennai - 9.

2.The District Magistrate and
District Collector
Salem District
Salem.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention dated 07.04.2017 passed by the 2nd respondent in C.M.P.No.21/Goonda/C2/2017 and quash the same and produce the detenu Kannan, aged about 23 years, S/o.Periyasamy, detained at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Dr.S.Manoharan

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, Kannan, S/o.Periasamy, Male, aged about 23 years. The detenu has been detained by the 2nd respondent by his order in C.M.P.No.21/Goonda/C2/2017 dated 07.04.2017, 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 would submit that the detenu has not moved any bail application as on the date of passing of the detention order. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is no imminent possibility of the detenu coming out on bail in the said case. Hence, it is stated that the Detaining Authority has passed the impugned order of detention in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail, is a mere ipse dixit without any cogent materials.

4. Despite opportunities, no counter affidavit has been filed by the respondents. However, 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 order of detention, no bail application was pending in the ground case. Though the detaining authority has made reliance on similar case in which accused was granted bail, the facts involved in that case are different. 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.21/Goonda/C2/2017 dated 07.04.2017, passed by the 2nd respondent is set aside. The detenu, namely, Kannan, S/o.Periasamy, Male, aged about 23 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(CCC)

//True Copy//

Sub Assistant Registrar

To:

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

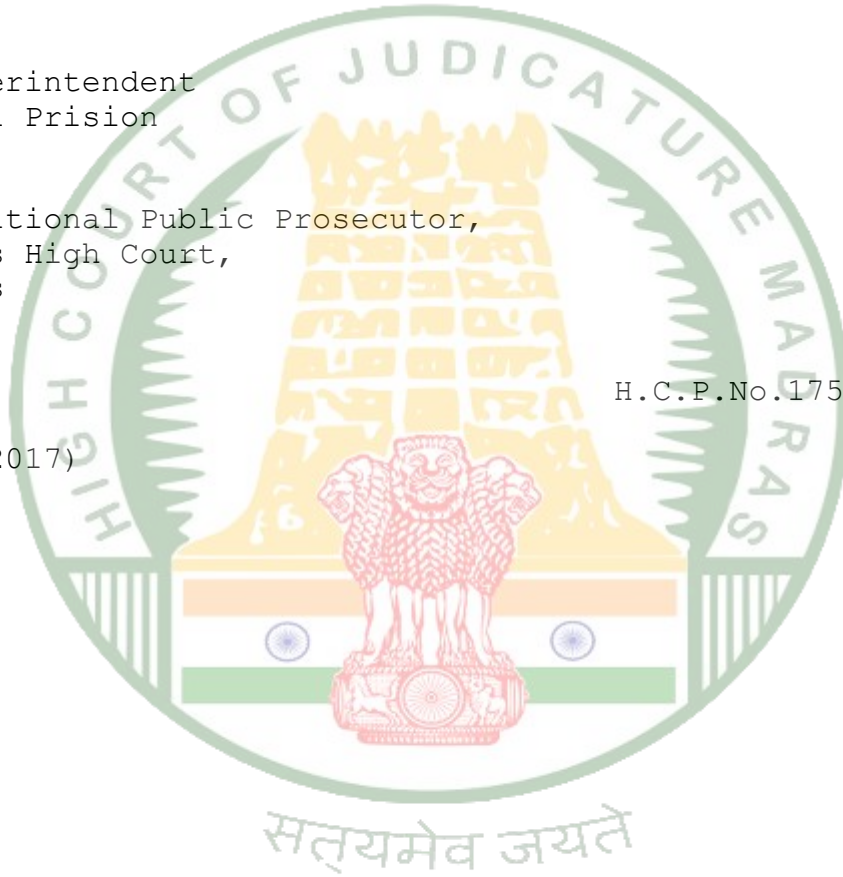
2.The District Magistrate and
District Collector
Salem District
Salem.

3.The Superintendent
Central Prison
Salem.

4.The Additional Public Prosecutor,
Madras High Court,
Madras

H.C.P.No.1756 of 2017

GN(25/10/2017)



WEB COPY