

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2017

Coram

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

H.C.P.No.1788 of 2017

Tamilarasi

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of Detention passed by the second respondent 30.08.2014 in Memo No.523/BCDFGISSSV/2017 against the petitioner husband Saravanan, Male, aged 34 years, S/o Kottaiyan, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S. Senthil Vel

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

O R D E R

(Order of the Court was made by RAJIV SHAKDHER,J .,)

1. The petitioner is the wife of the detenu , namely, Saravanan, Male, aged 34 years, S/o Kottaiyan, The detenu has been detained by the second respondent by his order in Memo No.523/BCDFGISSSV/2017, dated 30.08.2014, 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. In the impugned order, two adverse cases have been noted against the detenu; these are : Cr.Nos.1085/2017 and 1105/2017. Insofar as these two cases are concerned, the detenu has been booked under Sections 9(ii) r/w Sec.7 of Tamil Nadu Prohibition of Smoking and Spitting Act, 2003, 353, 506(i) of the IPC.

4. In the subject case, which is registered as : Cr.No.1106/2017, the detenu has been booked under Sections 8(c) r/w 20(b)(ii)(B) of NDPS At 1985.

5. A perusal of the impugned order would show that the detenu was arrested on 10.08.2017. Further more, paragraph four (4) of the impugned order shows that the detenu had moved bail applications, being : Cr1.M.P.No.2607/2017 and 13158/2017 before the VIII Metropolitan Magistrate Court, George Town, Chennai. The detaining authority, however, notes that even though bail was granted to the detenu, he was not able to avail of the benefit of the order passed in his favour, as he was not in a position to offer sufficient sureties. Concededly, the detenu was in prison on the date when the impugned order was passed.

6. Furthermore, the impugned order also demonstrates that insofar as the subject case is concerned i.e., Cr.No.1106/2017, no bail application was moved by the detenu as on the date of passing of the impugned order. The detaining authority, apart from noting these facts has also noted that in an earlier case, i.e., Cr1.M.P.No.1419 of 2014, bail was granted by the Special Court for NDPS Cases, Chennai. Based on this, the detaining authority has come to the conclusion that there is likelihood of the detenu being enlarged on bail and thus commit similar offences.

7. We have perused the record and also heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

8. According to us, the impugned order cannot be sustained for the following reasons:

I) The detenu was arrested on 10.08.2017, whereas the impugned order was passed on 30.08.2017. Clearly, there has been delay in passing the impugned order.

II) Even though the detenu had been granted bail in Cr.No.1105/2017, he was not able to avail the benefit of the order as he could not garner sufficient sureties.

III) Insofar as the subject case is concerned, i.e. Cr.No.1106/2017, admittedly, the detenu had not moved bail application on the date of passing of the impugned order. The reason articulated in the impugned order by the detaining authority to justify the detenu's detention, is that, in a similar case bail was granted by a Special Court in Chennai,

constituted for the purpose of trying NDPS Cases. Pertinently, the date of the order passed has not been referred to in the impugned order. In our opinion, given facts set out above, the conclusion reached by the detaining authority that there was real and imminent possibility of the detenu being enlarged on bail is flawed.

(IV) Furthermore, we may note that though notice in this petition was issued on 13.10.2017, despite which, till today, the State has not filed its counter affidavit. Clearly, in these circumstances, the assertions made in the captioned petition remains uncontroverted.

9. Thus, for the foregoing reasons, the detention order is liable to be set aside. It is directed accordingly.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No No.523/BCDFGISSSV/2017 dated 30.08.2017 passed by the second respondent is set aside. The detenu, namely, Saravanan, Male, aged 34 years, S/o Kottaiyan 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/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.

- 2.The Commissioner of Police,
Greater Chennai.

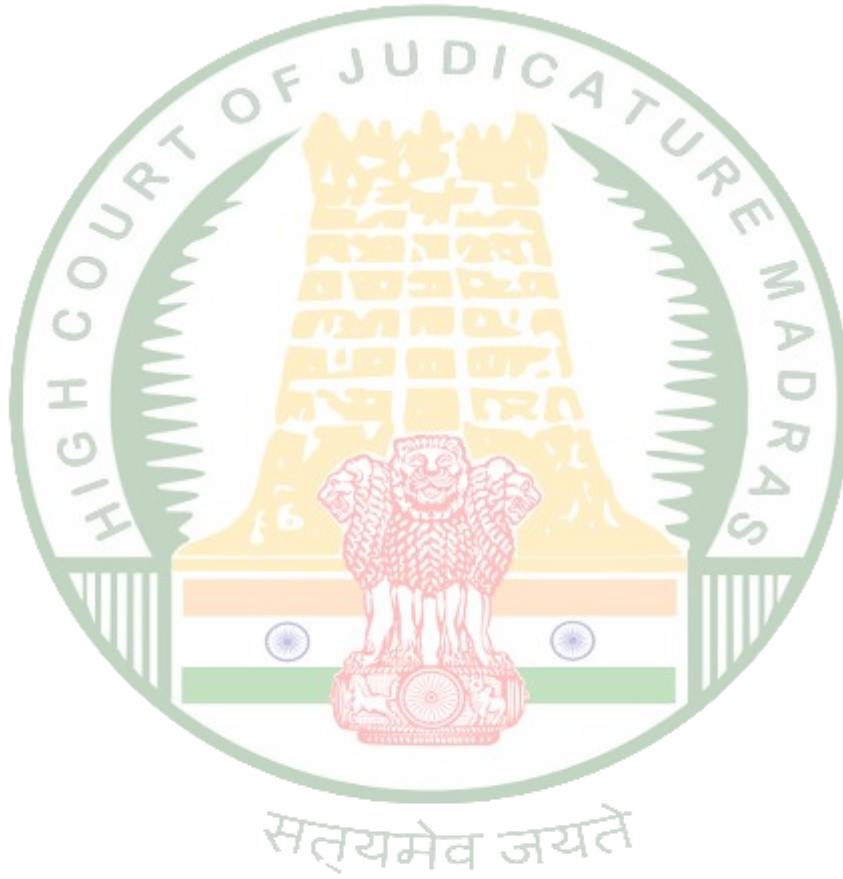
- 3.The Joint Secretary,
Public (Law and Order) Department,
Fort St. George, Chennai 600 009.

4. The Superintendent of Central Prison,
Puzhal-II, Chennai. (By Fax)

5. The Public Prosecutor,
Madras High Court,
Chennai.

HCP No.1788 of 2017

LRS (CO)
NR 17/11/2017



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