

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2017

Coram

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

H.C.P.No.1830 of 2017

Gomathi

... Petitioner

Vs.

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

2.The Commissioner of Police,
Salem City,
Salem District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus directing the respondents to produce the petitioner's brother by Periyasamy, S/o Venkatachalam, aged 46 years before this Court, now confined in Central Prison, Salem, set him at liberty and to call for the records pertaining to the order of detention passed in CMP No.67/D.O/Salem City/2017 dated 23..08.2017 passed by the 2nd respondent.

For Petitioner : Mr.T. Muruganantham

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

* * * * *

ORDER

(Order of the Court was made by **N.SATHISH KUMAR,J.,**)

The petitioner is the sister of the detenu, namely, Periasamy, Son of Venkatachalam, male aged about 46 years. The detenu has been detained by the second respondent by his order in MP No.67/D.O/Salem City/2017 dated 23.08.2017 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 detenu is arrested on 03.07.2017 for the alleged possession of 25 kgs of Ganja, which is a commercial quantity and detention order was passed on 23.8.2017.

4. Admittedly, the detenu had filed application for bail in N.I.N C.I.D. Cr.No.85/2017 under Secs.8(c), r/w 20(b) (ii) © and 25 of NDPS Act 1985 and the bail application is still pending for adjudication, whereas the detaining authority had taken note of the bail granted in C.M.P.No.371 of 2012 dated 06.12.2012 for a similar case of Pallapatty Police Station in Cr.No.857 of 2012 and infer that the detenu is likely to be released on bail.

5. It is curious to note that what was the nature of the similar case, in which, bail was granted in the year 2012, there was no reference in the detention order. According to the learned counsel for the petitioner, similar case, referred by the detaining authority is in respect of only 2 kgs of ganja. To substantiate the same, a copy of First Information Report is attached to the typed set of papers. The First Information Report shows that the similar case referred by the detaining authority relates only to the case pertaining to 2250 grams of Ganja, whereas, in the ground case, in which the detenu was detained, the specific allegation is the he was in possession of more than 20 kgs of ganja. This fact clearly exhibits the non application of the mind of the detaining authority.

6. Therefore, inferring that the detenu is likely to come out on bail

based on the similar case, which is not actually similar to the present case, is nothing but non application of mind.

7. That apart, despite notice issued on 05.10.2017, the State has not filed counter repudiating the allegations found in the petition.

8. On a perusal of the impugned order of detention, we find that the Detaining Authority has passed the impugned order without application of mind. Admittedly, no bail application has been moved by the detenu in Crime No.85/2017 (ground case). The only reason that the detention order has been passed by the Detaining Authority is pivoted on the fact that there is a real possibility of the detenu coming out on bail, since bail was granted for similar cases. According to us, this is not a sufficient ground for detaining the detenu. The details of the similar case relied upon by the detaining authority are also not furnished. 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.

9. In the result, the Habeas Corpus Petition is allowed and the order of

detention in CMP No.67/D.O/Salem City/2017 dated 23.08.2017 passed by the second respondent is set aside. The detenu, namely, Periasamy, Son of Venkatachalam, male aged about 46 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.)

31.10.2017

Index : yes/no
sr

Note: Issue copy by today itself

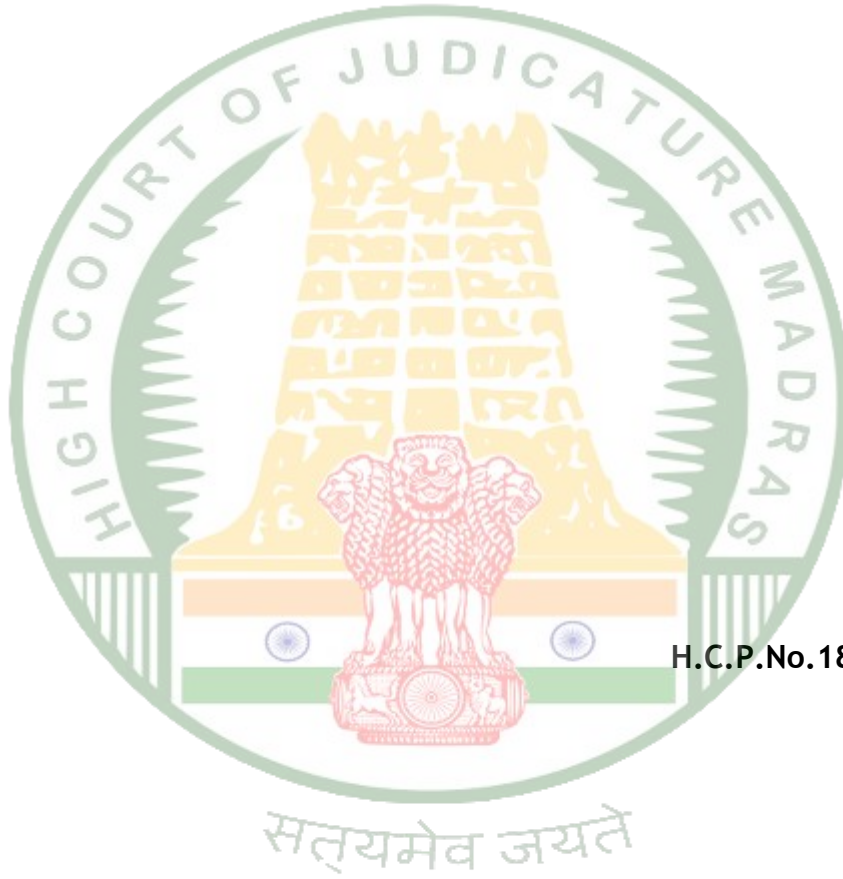
order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To

1. The Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
Salem City,
Salem District
3. The Superintendent of Central Prison,
Salem
4. The Public Prosecutor,
Madras High Court,
Chennai.

RAJIV SHAKDHER, J.
and
N.SATHISH KUMAR, J.

(sr)



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