

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM:

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

H.C.P.No.2019 of 2017

Susila

... Petitioner

-VS-

1.The State of Tamil Nadu,
 rep. by its Secretary to Government,
 Home, Prohibition and Excise Department,
 Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
 Salem City.

3.The Superintendent,
 Central Prison,
 Salem – 7.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire records leading to the detention of petitioner's son Pandiyaraj, aged 29 years, son of Subramani, Krishna Backery backside, Vanaja Line, Ammapet, Salem, presently detained in

Central Prison, Salem, under Act 14/1982, as a "Goonda" vide the detention order dated 6.10.2017 in C.M.P.No.80/ "Goonda"/ Salem City/ 2017 on the file of the 2nd respondent herein, directing to produce the person or body of the detenu before this Hon'ble Court and thereafter set him at liberty from the Central Prison, Salem, by setting aside the above order.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.B.Vasudevan
For Respondents : Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1.This is a petition, whereby, the challenge is laid to the detention order, dated 06.10.2017.

2.A perusal of the impugned detention order, would show, two adverse cases, have come to the notice of the detaining authority. These being: Crime No.62 of 2017 and Crime No.363 of 2017. In so far as these cases are concerned, the detenu, has been booked, under various provisions of the I.P.C. The record shows that the detenu, along with the co-accused, surrendered in Crime No.363 of 2017 on 25.07.2017.

2.1.This apart, in so far as the subject case is concerned, the same has been registered as Crime No.366 of 2017. In respect of this case, the detenu, has been booked under Sections 341, 392, 397 and 506(ii) of the I.P.C.

2.2.A perusal of the impugned order would show that even according to the detaining authority, the bail petitions, filed by the detenu, in Crime No.363 of 2017 and Crime No.366 of 2017, were dismissed, by the learned Principal Sessions Judge, Salem, on even date, i.e., 15.09.2017.

2.3.The detaining authority, however, reached a conclusion, that the detenu may be released on bail, by taking recourse to the fact, that in a similar case of 2014, bail had been granted.

3.We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. We have also perused the records.

4.According to us, the detention order, cannot be sustained, for the following reasons:

(i)First, even though, the detenu had surrendered on 25.07.2017, the detention order was passed only on 06.10.2017. Notice in this petition was

issued on 31.10.2017. Despite, opportunity having been granted, no counter affidavit has been filed, by the State. Resultantly, the delay, in passing the impugned detention order, remains unexplained.

(ii) Second, even though the detaining authority, observed that bail petitions filed by the detenu in Crime No.363 of 2017 and Crime No.366 of 2017 were dismissed, it went on to conclude that there was a real possibility of the detenu being released for custody, based on the ground that in 2014, in a similar case, bail had been granted. According to us, this conclusion was clearly flawed. The detaining authority, failed to apply its mind, to material and relevant facts.

5.Thus for the foregoing reasons, as indicated above, we are inclined to quash the impugned order. It is directed accordingly.

6.In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.80/Goonda/Salem City, dated 06.10.2017, passed by the second respondent is set aside. The detenu, namely, Pandiyaraj, son of Subramani, aged about 29 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.]

22.12.2017

Speaking Order/ Non Speaking Order

Index : Yes / No

Internet : Yes / No

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Note to office:

- (i) Issue copy by today itself.
- (ii) This order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

WEB COPY

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent,
Central Prison,
Salem – 7.
- 4.The Additional Public Prosecutor,
Madras High Court,
Madras.



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**RAJIV SHAKDHER, J.
And
N.SATHISH KUMAR, J.**

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H.C.P.No.2019 of 2017

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