

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

H.C.P.No.70/2017

Chandra ...Petitioner / Mother of the detenu
Vs

1. The State rep. by the
rep. by its Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George
Chennai 600 009.
2. The District Magistrate and District Collector,
Salem District, Salem. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records in C.M.P.No.49/GOONDA/C2/2016 dated 14.12.2016 on the file of the 2nd respondent and quash the detention as illegal and direct the respondents to produce the detenu Pagutharivan, son of Murugesan, aged 23 years, now confined in Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Rajanikanth

For Respondents : Mr.E.Raja,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH,J]

This Habeas Corpus Petition is filed, by the mother of the detenu, namely, Pagutharivan, son of Murugesan, aged about 23 years, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.49/Goonda/C2/2016 dated 14.12.2016, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. The learned Counsel appearing for the petitioner would submit that there is non-application of mind on the part of the detaining authority to the fact that when the bail application filed on behalf of the detenu in Attur Police Station Crime No.545/2016 for offences under Sections 302 IPC @ 341, 120(b), 302 IPC read with 109 IPC in CMP No.3780/2016 before the Principal Sessions Judge, Salem was dismissed on 03.11.2016 and in the absence of any satisfaction that the petitioner is likely to move an application for bail on behalf of the detenu, the subjective satisfaction arrived at by the detaining authority that there is imminent possibility of the petitioner coming out on bail cannot be sustained in the eye of law.

3. The learned Additional Public Prosecutor would submit that the detention order has been passed on appreciation of relevant materials and therefore, no interference is required.

4. On fact, there is no dispute that the bail application filed on behalf of the detenu in Attur Police Station Crime No.545/2016 was dismissed by the Principal Sessions Judge, Salem on 03.11.2016. There is no indication of filing either a fresh application before the very same court or before this Court. From the above, we are of the view that the detention order cannot be sustained since there is no imminent possibility of the detenu coming out on bail. Therefore, the detention order is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 14.12.2016, passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

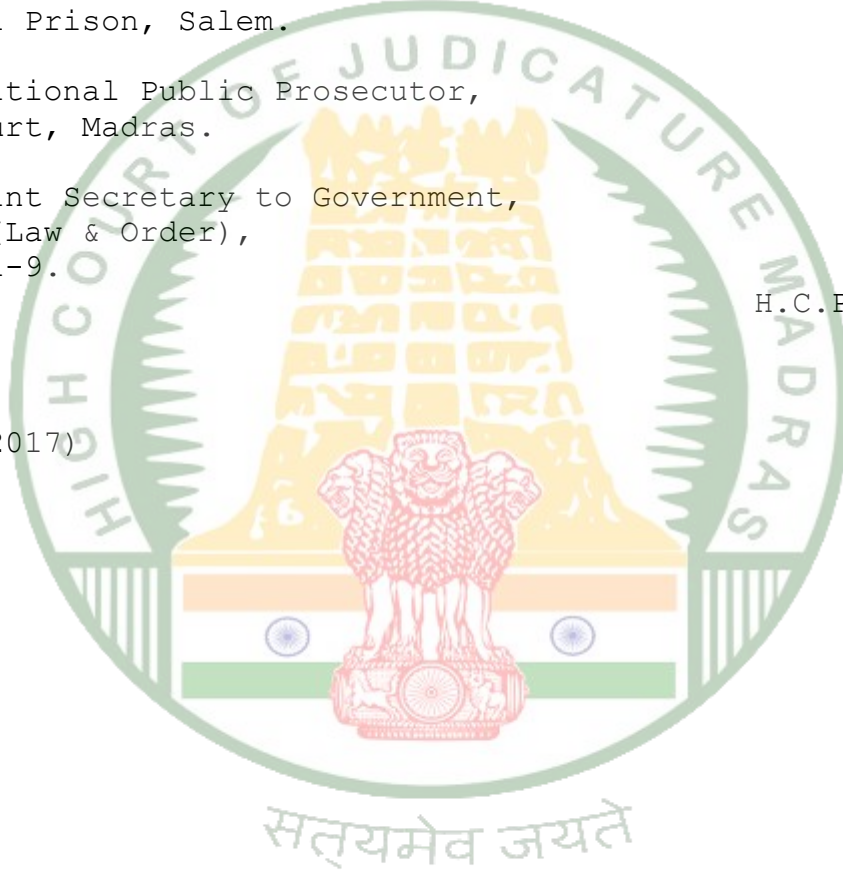
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To

1. The Secretary to Government
Prohibition and Excise Department (Home),
Fort St.George
Chennai 600 009.
2. The District Magistrate and District Collector,
Salem District, Salem.
- 3.The Superintendent of Police,
Central Prison, Salem.
- 4.The Additional Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public(Law & Order),
Chennai-9.

H.C.P.No.70/2017

CA(CO)
RS(13/06/2017)



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