

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

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

H.C.P.No.837 of 2017

Saraswathi

.. Petitioner

Vs.

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

2.The District Collector and
District Magistrate, Ariyalur District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, call for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in C.M.P.No.8 of 2017 dated 13.3.2017 in detaining the Detenu under 2 (f) of Tamil Nadu Act 14 of 1982 as Goonda and quash the same and direct the respondents to produce the detenu Kamalahasan, Son of Dharuman, aged about 33 years, who is detained at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr. M.N.Balakrishnan

For Respondents : Mr.V.M.R.Rajendran
Addl. Public Prosecutor

ORDER

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

The petitioner, who is the mother of the detenu, namely, Kamalahasan, S/o.Dharuman, age 33 years, challenges the impugned order of detention, dated 13.03..2017 in C.M.P.No.8 of 2017, detaining her son as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel for the petitioner would submit that the Detaining Authority has passed the order of detention on the ground that in similar case, in Crime No.57 of 2015, bail was granted to the co-accused and hence, there is imminent possibility of the detenu to come out on bail by filing bail application in the said case. However, no bail application has been filed by the petitioner so far. The learned counsel for the petitioner would further submit that the bail application filed by the detenu in Crime No. 06 of 2017 was dismissed on 22.2.2017 and thereafter, no fresh bail application has been filed by him. Therefore, the impugned order of detention is liable to be set aside.

5. Per contra, 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.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in Crime No.06 of 2017, the bail application filed by the detenu was dismissed on 22.02.2017. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere *ipse dixit* and that would vitiate the order of detention. Further, the facts involved in the similar case, which has been relied on by the detaining authority, are totally different. That apart, the detenu has been surrendered on 09.01.2017, whereas the Detention Order in question has been passed only on 13.03.2017, i.e. with delay of 61 days, and no explanation has been given on the side of the respondents for such delay. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in CrI.MP.No.08 of 2017 dated 13.03.2017 passed by the 2nd

respondent is set aside. The detenu, namely, Kamalahasan, Son of Dharuman, aged about 35 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.]

13.10.2017

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Note to office:-

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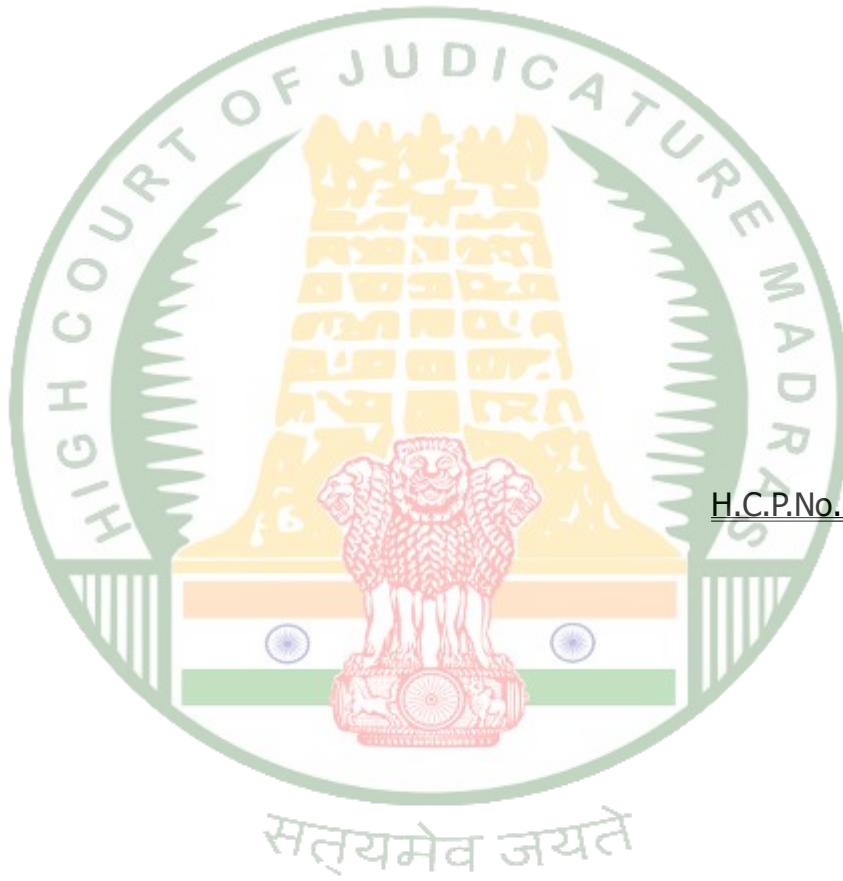
order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To

1. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai -9
- 2.The District Collector and
District Magistrate, Ariyalur District
3. The Superintendent, Central Prison, Trichirappalli
4. The Additional Public Prosecutor
High Court, Madras.

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

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