

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.955 of 2017

Govindaraj

... Petitioner

Vs.

1.State, Rep. by
The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariat, 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, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in C.M.P.No.24/Goonda/C2/2017, dated 23.04.2017 passed by the 2nd respondent against the detenu, P.Govindaraj, S/o.Palaniswamy, aged 27 years, now confined in Central Prison, Salem, and to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Ganesh

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

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O R D E R
(Order of the Court was made by RAJIV SHAKDHER, J)

1.This is a petition, which seeks to assail the order of detention dated 23.04.2017 passed in C.M.P.No.24/Goonda/C2/2017 by the second respondent in exercise of his powers conferred under Section 3(1) of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand

Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short 'Tamil Nadu Act 14 of 1982). The said detention order has been passed under Section 2 (f) of the Tamil Nadu Act 14 of 1982, branding the detenu as a "Goonda".

2.The petitioner is the detenu, who has assailed the order of detention on the ground that it has been passed without application of mind and contrary to law.

3.In the impugned order, two adverse cases have been noted by the detaining authority. In the first adverse case, the detenu has been accused of having committed offences under Sections 376 and 302 of the Indian Penal Code, while the second adverse case lodged against the detenu pertains to the offence having been committed under Section 379 of Indian Penal Code. Insofar as the case which led to his detention is concerned, the same is numbered as Cr.No.53/2017. The detenu, in this case, is accused of having committed offences under Sections 392 and 397 of Indian Penal Code.

4.Learned counsel appearing on behalf of the detenu says that there has been a total non-application of mind by the detaining authority, In this behalf, our attention has been drawn to paragraph 4 of the impugned order.

5.On the other hand, learned Additional Public Prosecutor, relies upon the detention order to resist the petition.

6.We have perused the detention order. A perusal of the detention order shows that even according to the detaining authority, in Cr.No.53/2017, the detenu has not filed any bail petition so far. The only reason that the detaining authority apprehends that the detenu may be enlarged on bail and therefore, requires to be detained, is that in a similar case, bail was granted, albeit, in 2014 (Crl.M.P.No.3972/2014).

7.According to us, these facts, as set out above, display the total non-application of mind by the detaining authority. The fact that in a similar case, another accused was granted bail in 2014, whereas the detenu was arrested on 11.07.2016, could not possibly have been the reason for passing the detention order. Furthermore, as noted above, the detenu has not filed any bail application in Cr.No.53/2017.

8.Pertinently, notice in this petition was ordered as far back as on 20.06.2017. However, despite, opportunities having been given to the State, no counter-affidavit has been filed, resultantly, the assertions made in the petition had gone uncontroverted.

9. For all these reasons, we are inclined to quash the impugned order of detention and allow this Habeas Corpus Petition.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention dated 23.04.2017 passed in C.M.P.No.24/Goonda/C2/2017 by the second respondent is set aside. The detenu, namely, Govindaraj, Son of Palanisamy, male aged about 27 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.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Government,
Home, Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.
2. The District Magistrate and District
Collector, Salem District,
Salem.
3. The Superintendent,
Central Prison, Salem. (In duplicate for communication
for detenu)
4. The Public Prosecutor,
Madras High Court, Chennai.

5.The Joint Secretary to Government
Public Law and Order Fort St.George Chennai-9

+1 cc to Mr.R.Ganesh Advocate sr 76832

H.C.P.No.955 of 2017

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