

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM:

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

H.C.P. No.966 of 2017

Azhagan Prabu

... Petitioner

-vs-

1. The Commissioner of Police  
Commissioners Office  
Salem City, Salem.
2. The State of Tamil Nadu  
Represented by its Secretary  
Prohibition and Excise Department (Home)  
Fort St.George, Chennai - 600 009 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records C.M.P.No.22/Goonda/Salem City/2017, date 24.04.2017, on the file of the first respondent viz., Commisioner of Police, Salem City and to produce the body of the petitioner Azhagan Prabu, son of Venkatachalam, aged about 32 years, who is now confined in Central Prison, Salem, before this Court and set aside the abovesaid detention order and to let the petitioner at liberty.

For Petitioner: Mr. S. Rajeswaran

For Respondents: Mr. V.M.R.Rajentran  
Additional Public Prosecutor

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

The petitioner namely, Azhagan Prabu, aged 32, s/o Venkatachalam Male, aged about 32 years, has been detained by the first respondent by his order in C.M.P.No.22/Goonda/Salem City/2017 dated 24.04.2017, 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 learned counsel appearing for the petitioner would submit that when there is no bail application filed by the petitioner and there is no bail application pending before the court, the detaining authority has come to the conclusion that there is real possibility of the detenu coming out on bail, would clearly shows the non application of mind.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments 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.

5. 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, no bail application has been filed so far. 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. It is a trite law that when no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. Further no counter has been filed so far by the prosecution since 29.06.2017. In such view of the matter, the impugned detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.22/Goonda/Salem City/2017 dated 24.04.2017, passed by the 1st respondent is set aside. The Petitioner, namely, Thiru. Azhagan Prabhu, son of Venkatachalam, aged about 32 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.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

ggs

To:

1. The Commissioner of Police  
Commissioners Office  
Salem City, Salem.
  2. The Secretary to Government,  
Prohibition and Excise Department (Home)  
Fort St.George, Chennai - 600 009
  3. The Public Prosecutor,  
Madras High Court,  
Madras.
  4. The Superintendent  
Central Prison, Salem
  5. The Joint Secretary to Government  
Public(Law and order)  
Fort. St. George  
Chennai 9.
  6. The Registrar General,  
High Court, Madras.
- +1 CC to Mr.S. Rajeswaran, Advocate sr 75217.

H.C.P.No. 966 of 2017

SP(25/10/2017)



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