

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.2009 of 2016

Smt.Rasammal,
W/o Rangasamy,
Thottiya Street, Pudukombai,
Echampatti, Belukurichi,
Namakkal District.Petitioner/Grand mother of
the detenue

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009
2. The District Magistrate & District Collector,
Namakkal District, Nammakal.Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ, order or Direction in the nature of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 25.04.2016 in C.M.P.No.12/Goonda/2016/M1 against the grandson of the petitioner, detenu Kumar @ Sivakumar, male, aged 23, S/o Kannan, who is confined at Central Prison, Salem and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.A.Mariappan

For respondents: Mr.V.M.R. Rajentren
Addl. Public Prosecutor

ORDER

(Order of the Court was made by S. NAGAMUTHU, J.,)

Challenging the detention order passed by the second respondent, vide proceedings C.M.P.No.12/GOONDA/2016/M1 dated 25.04.2016, detaining the detenu Mr.Kumar @ Sivakumar under

Section 3(1) of the Tamil Nadu Act 14 of 1982, the petitioner has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though, several grounds have been raised in the petition, the learned counsel appearing for the petitioner would submit that, as found in the paragraph 4 of the detention order, the bail application filed by the detenu in C.M.P.No.2130 of 2016 in Crime No.198/2016 was dismissed by the learned Judicial Magistrate No.1, Namakkal, on 06.04.2016 and there was no other application moved for bail.

4. When that be so, according to the learned counsel for the petitioner, the detaining authority had assumed that the detenu would file application, seeking bail before the Sessions Court, in which case, there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

5. It is not known as to how the Detaining Authority has come to the conclusion that there is real possibility of the detenu coming out on bail. This only reflects that the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 25.04.2016, 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.

सत्यमेव जयते

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

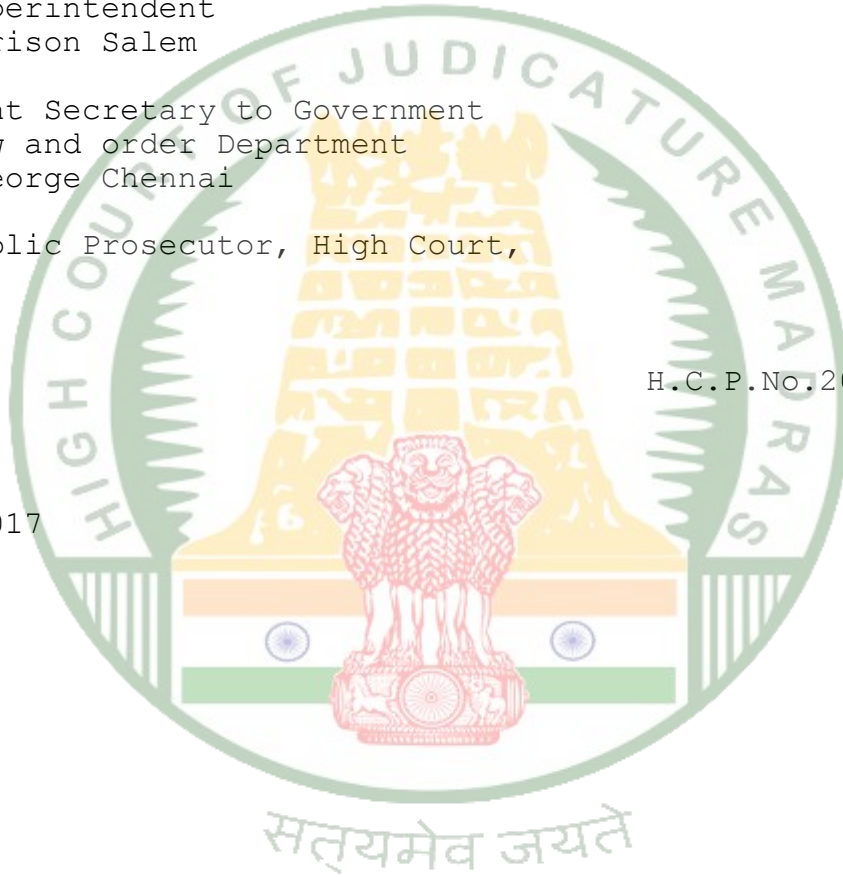
arr/sts

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009
2. The District Magistrate & District Collector,
Namakkal District, Namakkal.
3. The Superintendent
Central Prison Salem
4. The Joint Secretary to Government
Public Law and order Department
Fort St. George Chennai
5. The Public Prosecutor, High Court,
Chennai.

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