

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.05.2017

Coram:-

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice R.SUBRAMANIAN

Habeas Corpus Petition No.2376 of 2016

S.Kalaivani

... Petitioner

Vs.

1.The State Rep. by
The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-600 009.

2.The District Magistrate and the District Collector,
Salem District, Salem.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in C.M.P.No.31/Goonda/C2/2016 dated 05.10.2016 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu Thiru Siva S/o Subramani aged 26 years now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

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

O R D E R

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the mother of the detenu by name Siva, who has been detained by the 2nd respondent under the provisions of the Tamil Nadu Act 14 of 1982 branding him as a 'Goonda' by an impugned Detention Order dated 05.10.2016. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

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

3. From the records, it appears that the detenu was involved in four cases apart from ground case. Out of the four cases, in three of them, no bail application has been filed and so is the case in the ground case. But in paragraph 4 of the grounds of detention, it has been stated that in view of the fact that in similar case in Crime No.555 of 2014 under Section 392 read with 397 and 506(ii) IPC bail having been granted, there is a likelihood of bail being granted in favour of the detenu in a ground case also in Crime No.524 of 2016.

4. The learned counsel appearing for the petitioner submitted that the similar case relied upon by the detaining authority was with respect to the case registered in the year 2014. Admittedly, in the ground case, no bail application has been filed and thus, the detenu is still in the judicial custody. Therefore, the statement made that there is a likelihood of the detenu coming out on bail is not correct, which shows that there is non application of mind.

5. Despite the matter being pending for quite some time and notwithstanding the fact that merely eight months have been elapsed out of one year of detention, no counter affidavit has been filed.

6. Considering the above, especially on the issue pertaining to the non application of mind on the part of the detaining authority in passing the detention order, we are inclined to set aside the detention order.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in C.M.P.No.31/Goonda/C2/2016 dated 05.10.2016 passed by the second respondent is quashed. The detenu, viz., Siva, son of Subramani, is directed to be released forthwith, unless his presence is required in connection with any other case.

-s/d-
सहायक न्यायिक
Assistant Registrar

True Copy

Sub-Assistant Registrar

raa

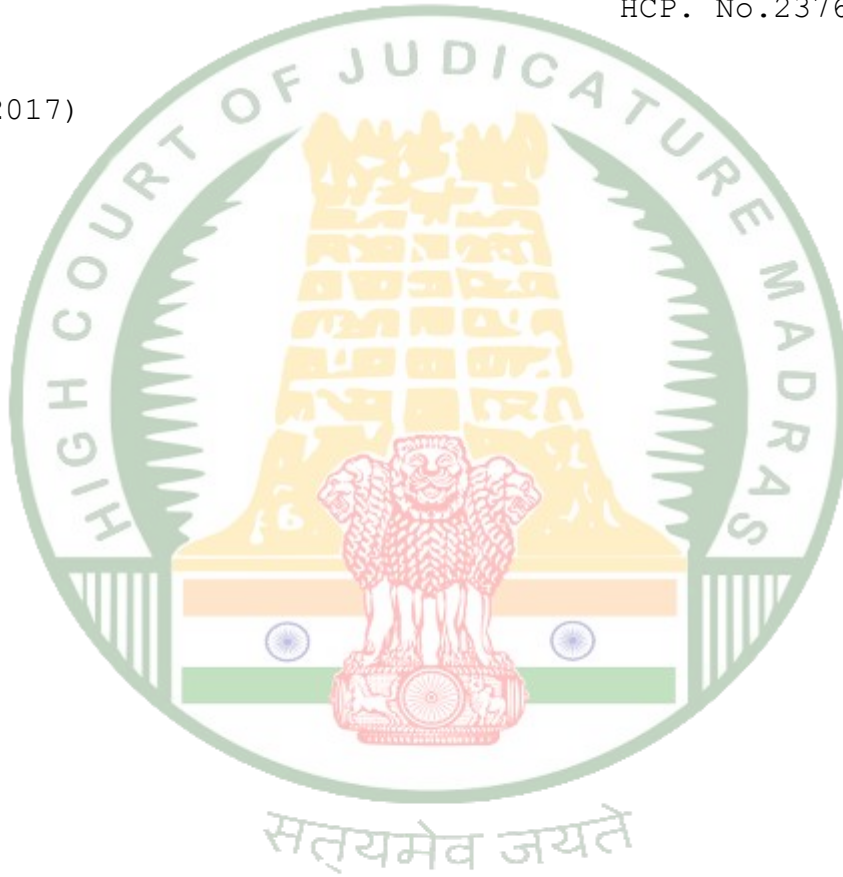
To

1. The Secretary to the Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai-600 009.

2. The District Magistrate and the District Collector,
Salem District, Salem.
3. The Superintendent, Central Prison, Salem.
(In duplicate for communication to the petitioner)
4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor, High Court, Madras.

HCP. No.2376 of 2016

CA(CO)
NR(12/06/2017)



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