

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.06.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 138 OF 2018

Govindan @ Govindaraj

.. Petitioner

- Vs -

1. The Secretary to Government
Home, Prohibition & Excise Dept.
Secretariat, Chennai - 9.

2. The District Collector &
District Magistrate
Salem District, Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed in C.M.P. No.59/Goonda/C2/2017 dated 14.10.2017, passed by the 2nd respondent and set aside the same and direct the respondents to produce the detenu, Govindan @ Govindaraj, S/o Rajamanickam, lodged in Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.N.Siva Bharathi,

For Respondents: Mr.R.Prathap Kumar, APP

सत्यमेव जयते
ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The second respondent herein, clamped an order of detention on Govindan @ Govindaraj, S/o Rajamanickam, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the petitioner has filed the present habeas corpus petition.

3. It is seen from the typed set of papers that the detenu is in custody from 1.8.17. In the order of detention it is stated that accused was remanded to judicial custody on 1.8.17 with regard to Crime No.291/17 registered u/s 302 r/w 394 IPC and the remand has been extended from time to time. The detaining authority, in the order of detention, has observed that though the detenu has not filed any bail application, but the detaining authority, relying upon similar case, where bail has been granted, has arrived at the subjective satisfaction to detain the detenu stating that there is real and imminent possibility of the detenu to come out on bail.

4. According to the learned counsel for the petitioner, the above subjective satisfaction arrived at by the detaining authority is vitiated as the detaining authority has not applied his mind to the materials available on record while passing the order of detention.

5. On the above contention, we heard the submission of the learned Addl. Public Prosecutor.

6. A perusal of the detention order reveals that the detaining authority, relying upon the order passed in similar case, has expressed subjective satisfaction to detain the detenu, though no bail application has been filed by the detenu. It is to be pointed out that one case cannot be compared with another case. Just because, a Sessions Court, in a case under Section 302 IPC has granted bail, that does not mean that the petitioner will also be granted bail for an offence u/s 302 IPC. Bail is granted depending on the facts and circumstances of each and every case.

7. The subjective satisfaction arrived at by the detaining authority for detaining the detenu is not based on materials available on record and the subjective satisfaction arrived at stands vitiated and, hence, the impugned order is liable to be quashed.

8. On the above ground, the order of detention is quashed. The habeas corpus petition is allowed. The Govindan @ Govindaraj, S/o Rajamanickam, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

District, Salem.

Superintendent,
Jail Prison, Salem.

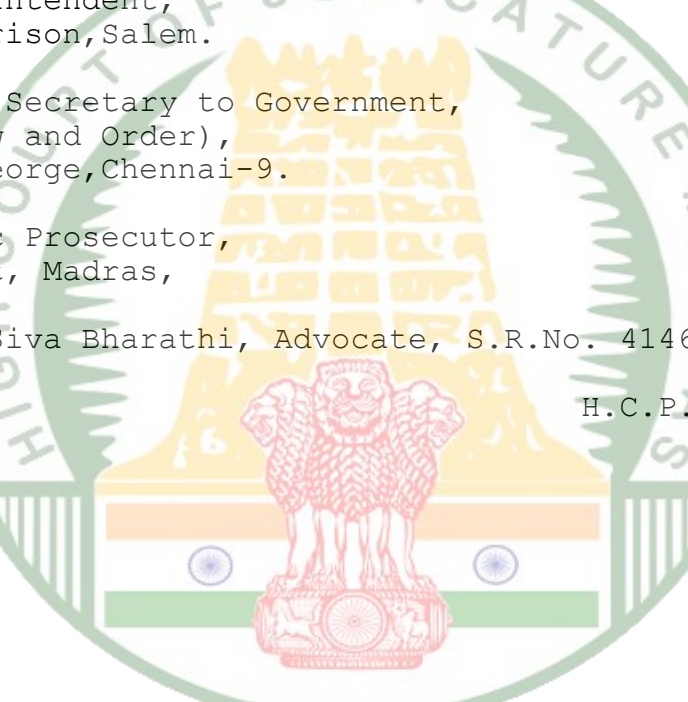
Joint Secretary to Government,
Department (Law and Order),
St. George, Chennai-9.

Public Prosecutor,
Court, Madras,

Mr. N. Siva Bharathi, Advocate, S.R.No. 41468.

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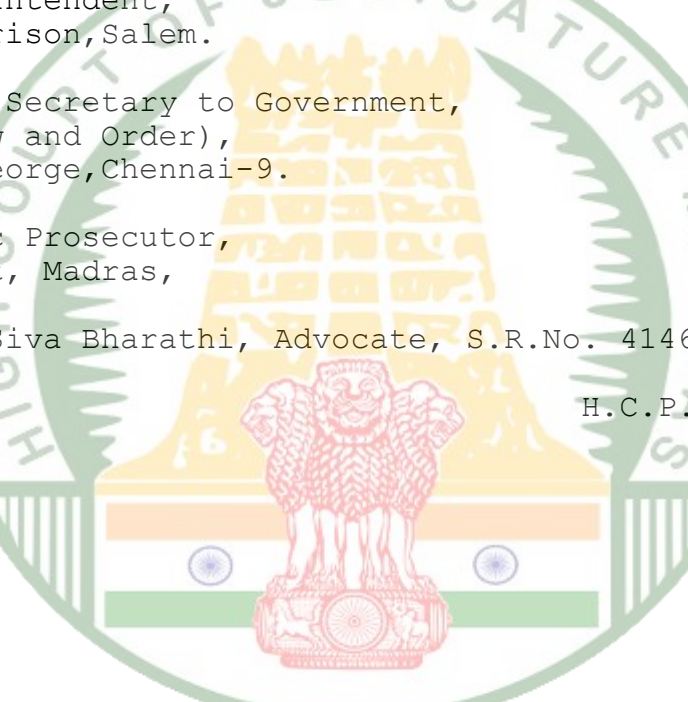
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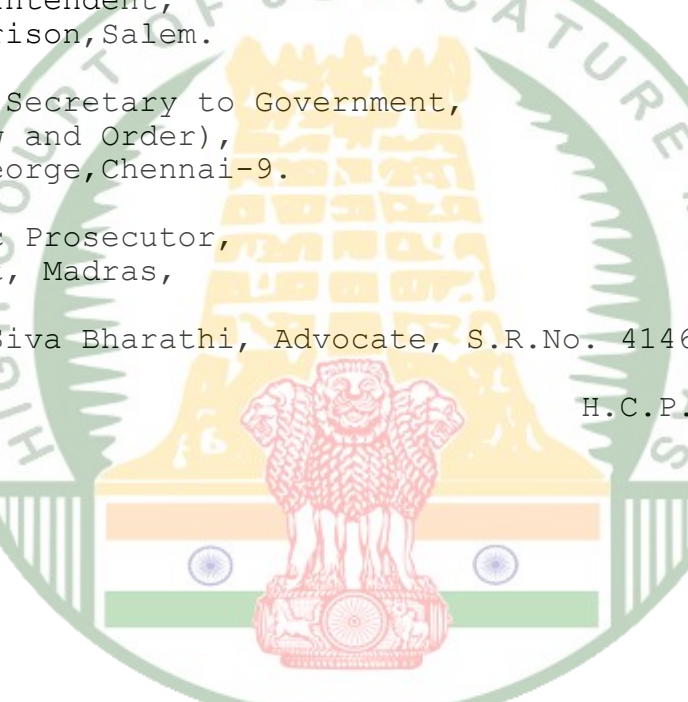
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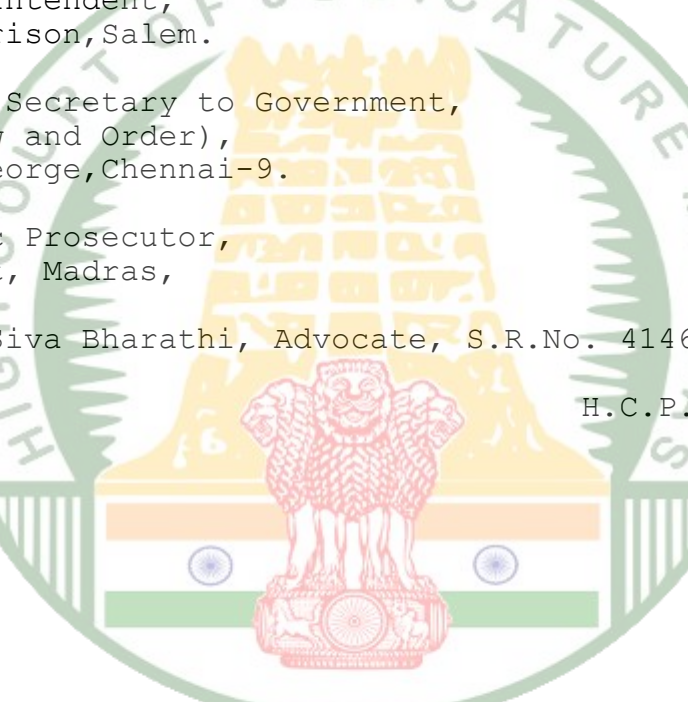
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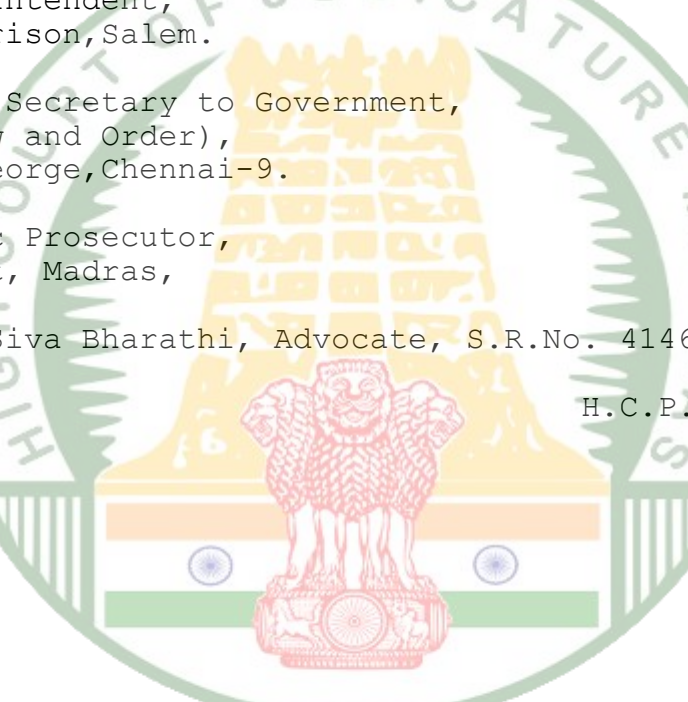
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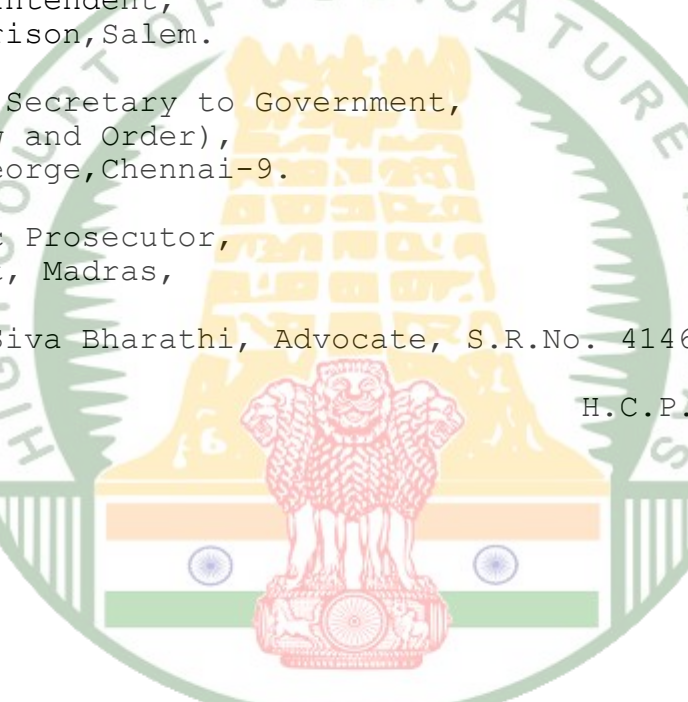
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