

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.07.2018

CORAM :

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

H.C.P. NO. 290 OF 2018

R.Vijayakumar

.. Petitioner

- Vs -

1. State of Tamil Nadu
rep. By its Secretary
Prohibition & Excise Dept.
Fort St. George, Chennai - 9.

2. The Commissioner of Police
Salem City, 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 on the file of the 2nd respondent relating to the detention in C.M.P. No.90/Goonda/Salem City/2017 dated 20.12.2017 and direct the respondents herein to produce the detenu Prakash, S/o Vijayakumar, aged about 23 years, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr. C.K.M.Appaji

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(ORDER OF THE COURT WAS MADE BY DR. S.VIMALA, J.)

The second respondent herein clamped an order of detention on Prakash, S/o Vijayakumar, 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. Learned counsel appearing for the petitioner submitted that the detenu has been granted bail in a crime, different from

the one in the ground case. However, for arriving at the subjective satisfaction, the detaining authority has relied on the said bail order, which cannot be a material on which reliance can be placed to detain the detenu and, therefore, the subjective satisfaction arrived at by the detaining authority is vitiated and the detention order is liable to be quashed.

3. This Court heard the learned Addl. Public Prosecutor on the above contentions.

4. A perusal of the detention order reveals that in Hasthampatti Police Station Crime No.555/14, which has been registered u/s 392, 397 and 506 (2) IPC, bail has been granted to the detenu on 3.11.14. The detaining authority has relied upon the said order in the ground case, wherein the detaining authority has observed that for similar offence committed by the detenu in Cr. No.555/14 on the file of Hasthampatti Police Station, bail has been granted and, therefore, has expressed subjective satisfaction that there is real possibility of the detenu coming out on bail and, therefore, has clamped the order of detention.

5. It is to be pointed out that grant of bail in a crime registered for the same offences on the file of a different police station cannot be taken into consideration for the purpose of clamping the order of detention holding that there is a possibility of the detenu coming out on bail. Bail is granted on the basis of facts and circumstances in each and every case and grant of bail in one case would not be the basis for grant of bail in some other case. The facts and circumstances of the specific case determines the grant of bail. In the above backdrop, the subjective satisfaction arrived at by the detaining authority referring to bail granted in some other case for clamping the order of detention in the ground case definitely vitiates the order of detention.

6. Accordingly, on the above ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Prakash, S/o Vijayakumar, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

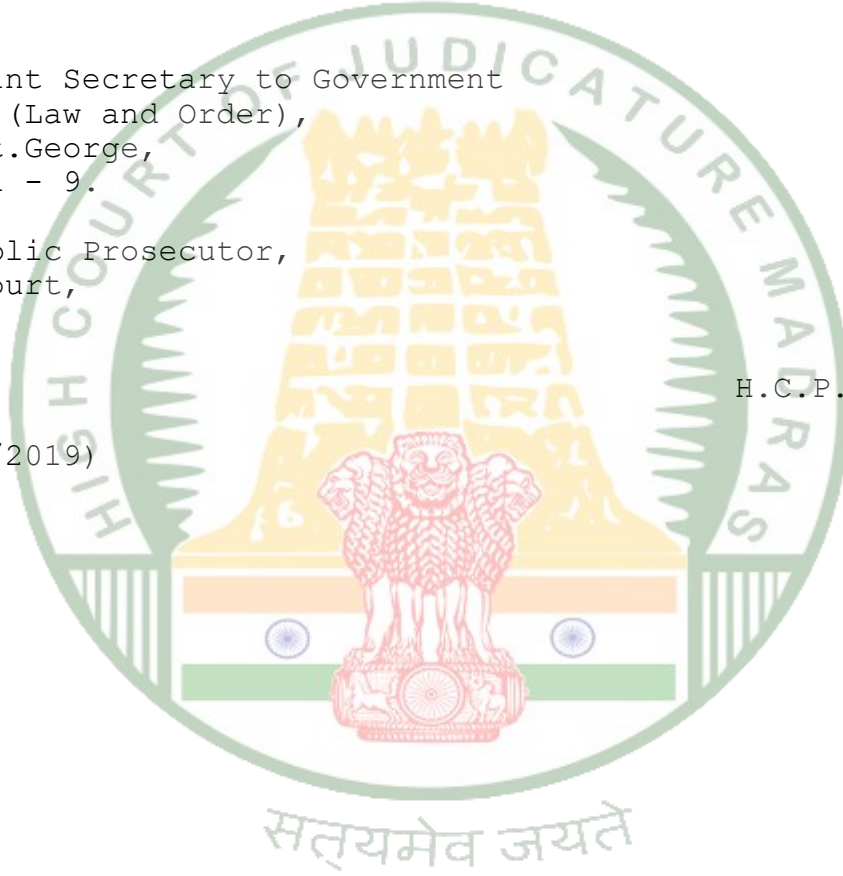
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To

1. The Secretary to Government
Government of Tamil Nadu
Prohibition & Excise Dept.
Fort St. George, Chennai - 9.
2. The Commissioner of Police
Salem City, Salem.
3. The Superintendent of Central Prison,
Salem.
4. The Joint Secretary to Government
Public (Law and Order),
Fort St. George,
Chennai - 9.
5. The Public Prosecutor,
High Court,
Madras.

H.C.P.No.290/2018

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