

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.07.2018

CORAM

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

H.C.P. NO. 339 OF 2018

Ashina

... Petitioner

- Vs -

1.The State Rep.by its Secretary to Government
Dept. of Home, Prohibition & Excise
Fort St. George, Chennai 600 009.

2. The Commissioner of Police
The Greater Chennai Vepary
Chennai 600 007.

... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in Memo No.44/ BCDFGISSSV/2018 dated 30.01.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Mubarak S/o Jahir Hussain aged 26 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.C.Prem Kumar

For Respondents : Mr. R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

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

The 2nd respondent, clamped an order of detention on 30.01.2018 on Mubarak S/o Jahir Hussain aged 26 years, 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 though the detenu has been granted bail in two cases, however, for want of production of sureties, the detenu is unable to come out. However, the detaining authority has expressed subjective satisfaction for detaining the detenu stating that there is likelihood of the detenu coming out on bail without advertting to the fact that the detenu has already been granted bail in two cases.

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

4. A perusal of the order of detention reveals that the detaining authority has stated that there is possibility of the detenu coming out on bail, and, therefore, has passed the order of detention. However, as pointed out by the learned counsel for the petitioner, the fact remains the detenu has been granted bail in two cases, which fact has not been taken note of by the detaining authority. Therefore, the subjective satisfaction arrived at by the detaining authority, stands vitiated and, therefore, the detention order is liable to be quashed.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

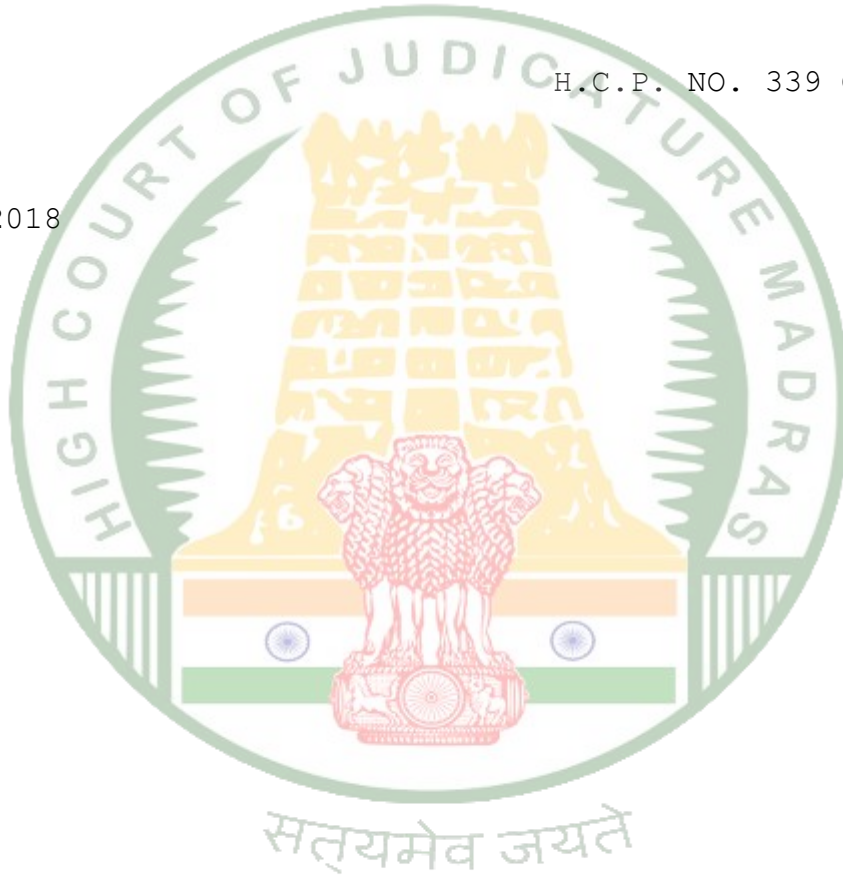
To :

- 1.The State Rep.by its Secretary to Government
Dept. of Home, Prohibition & Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
The Greater Chennai
Vepery, Chennai 600 007.

- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.(In duplicate for commutation to the Detenue)
- 4.The Joint Secretary to Government,
Public (Law & Order)
Fort Saint George,
Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras-104.

H.C.P. NO. 339 OF 2018

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