

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.07.2018

CORAM

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

H.C.P. NO. 383 OF 2018

Madhu

.. Petitioner

- Vs -

1. The Secretary to Government (Home)
Prohibition & Excise Dept.
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
 2. The Commissioner of Police
Salem City, Salem.
- .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in C.M.P. No.1/Goonda/Salem City/2018 dated 24.1.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Stephenraj @ Deepanraj, S/o Selvaraj, aged 28 years, now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. D.Mario Johnson

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The second respondent herein, clamped an order of detention on Stephenraj @ Deepanraj, S/o Selvaraj, 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. Learned counsel appearing for the petitioner submits that the detenu has not filed any bail application, but the detaining authority, in the order of detention has stated that even though no bail application is filed by the detenu or his relatives, a finding has been recorded by the detaining authority that there is a possibility of the detenu coming out on bail taking recourse to the case of the co-accused, Selvaganapathy, who has been granted bail and, therefore, there is likelihood of detenu coming 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 the case of the co-accused, Selvaganapathy, 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 the case of one of the accused in a criminal case cannot be compared with another person in the same case. Just because, the Sessions Court, in the case of the co-accused has granted bail to the co-accused, that does not mean that the detenu in this case will also be granted bail. Bail is granted depending on the facts and circumstances of each and every case.

7. In the above backdrop, the subjective satisfaction arrived at by the detaining authority for detaining the detenu is not based on materials available on record and in the absence of materials on record, 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 detenu, Stephenraj @ Deepanraj, S/o Selvaraj, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

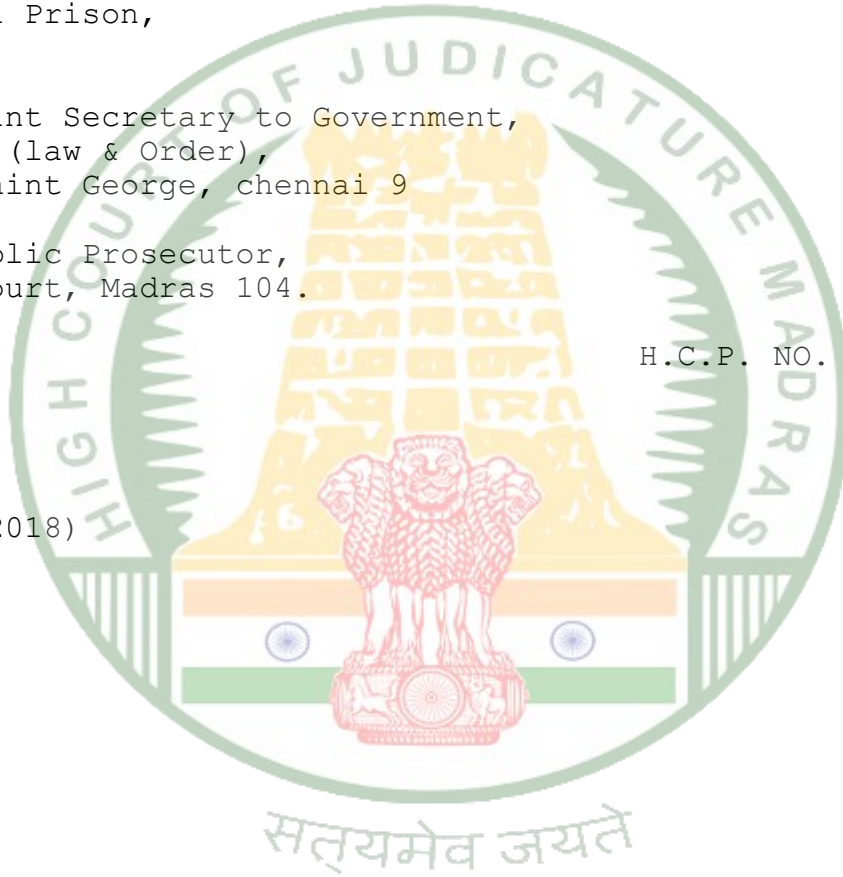
GLN

To

1. The Secretary to Government (Home)
Prohibition & Excise Dept.
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Salem City, Salem.
3. The Superintendent,
Central Prison,
Salem.
4. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9
5. The Public Prosecutor,
High Court, Madras 104.

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NRL (CO)
GN (25/10/2018)



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