

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. 424 OF 2018

Akila

.. Petitioner/Wife
of the Detenu

- Vs -

1. The State of Tamil Nadu
rep. By its Secretary to Government
Home, Prohibition & Excise(XVI) Dept.
Secretariat, Fort St. George
Chennai 600 009.
 2. The Commissioner of Police
Greater Chennai, Chennai.
- ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records pertaining to the detention order made in Ref. 79/BCDFGISSSV/2018 dated 12.2.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu, Uma Maheshwaran @ Appu, S/o Sugumar, aged about 26 years, now confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan
For Respondents : Mr.R.Prathap Kumar, APP

ORDER

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

The 2nd respondent, clamped an order of detention on 12.02.2018 as against Uma Maheshwaran @ Appul, S/o Sugumar, 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 has come forward with the present habeas corpus petition.

3. Learned counsel appearing for the petitioner submits that the very fact that the adverse cases have been serially registered against the detenu would speak volumes about the authenticity of the prosecution case. It is the submission of the learned counsel for the petitioner that the Detaining Authority has stated that there is likelihood of the detenu coming out on bail and, therefore, has clamped the order of detention, but no bail application has been filed by the detenu in any of the cases, and, therefore, clearly shows non-application of mind on the part of the detaining authority and, in turn, vitiates the order of detention and, the detention is liable to be quashed.

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

5. The contention about the serial registration of complaints need not be considered at this stage for the reason that the Trial Court will have the opportunity of saying whether the cases registered are true or not. Further, in one case, it is seen that the complainant is stated to be a lawyer and in the said case, it is to be seen whether this accused committed the said theft, which can be decided only at the time of trial.

6. Insofar as the contention relating to non-application of mind on the part of the detaining authority is concerned, it is seen from the records that though the detaining authority has stated that no bail application has been filed by the detenu in any of the cases, however, has gone on to clamp the order of detention holding that there is likelihood of the detenu coming out on bail. When no bail application has been filed, as has been pointed out by the detaining authority, there is no possibility of the detenu coming out on bail. This clearly shows non application of mind on the detaining authority while clamping the order of detention and this vitiates the order of detention.

7. On this ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Uma Maheshwaran @ Appu, S/o Sugumar, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

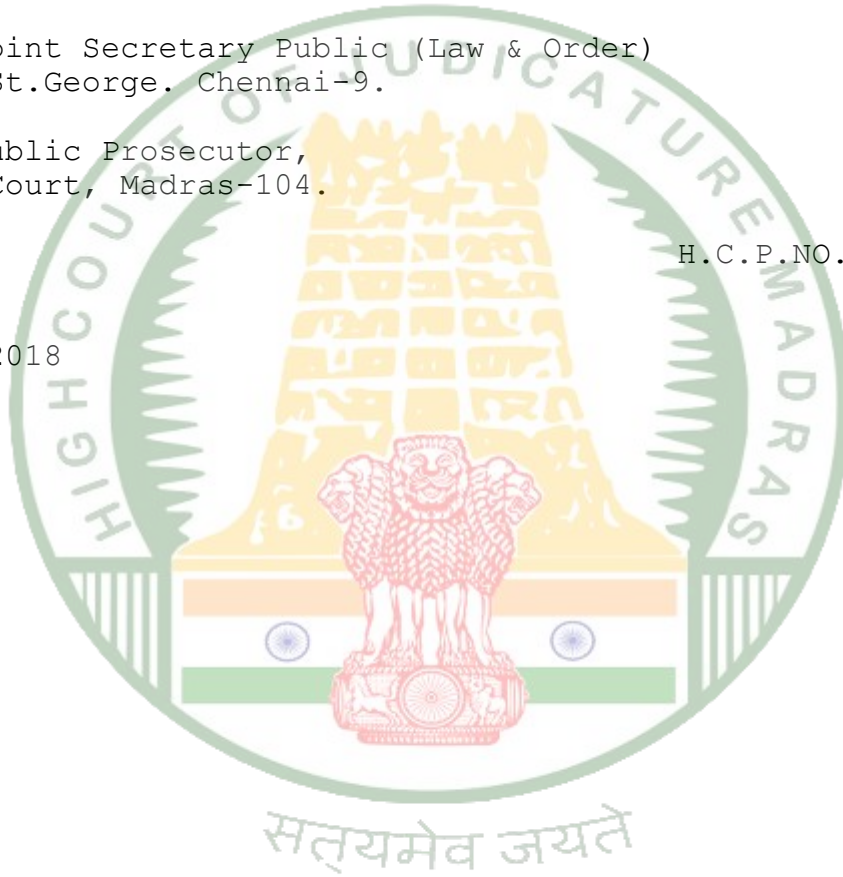
GLN

To

1. The Secretary to Government
Home, Prohibition & Excise Dept.
Secretariat, Fort St. George
Chennai 600 009.
2. The Commissioner of Police
Greater Chennai, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary Public (Law & Order)
Fort St.George. Chennai-9.
5. The Public Prosecutor,
High Court, Madras-104.

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