

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Habeas Corpus Petition No.472 of 2018

Govinthammal .. Petitioner
/ Mother of the Detenu

- Vs -

1. State rep. by,
The Secretary to Government,
Home, Prohibition and Excise Department,
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, to call for the records in C.M.P.No.10/Goonda/Salem City/2018, dated 23.02.2018, on the file of the second respondent and to quash the detention as illegal and to direct the respondents to produce the detenu Prabakar @ Prabakaran S/o. Palanisamy, aged 24 years now confined in Central Prison, Salem, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Rajanikanth

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

This petition has been filed by the petitioner/mother of the detenu seeking directions to the respondents to release the detenu, petitioner's son, Prabakar @ Prabakaran.

2.It is the case of the petitioner that the detenu is involved in a case in Crime No.765 of 2017 under Sections 354 (A), 395 and 397 I.P.C.

3.The learned counsel for the petitioner submitted that a single case that is registered against the petitioner herein could be dealt with under original law of land and that does not

require the invoking the provisions of the detention laws, and therefore, the subjective satisfaction arrived at by the detaining authority be termed as biased and the detention order has to be quashed. In support of the same, the decision of this Court which relies upon the Full Bench decision of the Madurai Bench of this Court is relied upon, where-under, it has been held that there are two conditions that must be satisfied and it should be to the satisfaction of the detaining authority, which reads thus:

(i) There must be material on record that should establish that the individual can be branded as "Goonda" and

(ii) The detaining authority should be satisfied that the act or any one of the acts of the said individual is prejudicial to the maintenance of the public order.

4.It is the contention of the learned counsel for the petitioner that the only one act alleged cannot be said to be prejudicial to maintenance of the public order and therefore the detention order has to be quashed.

5.We are convinced with the arguments of the learned counsel for the petitioner. The decision, cited supra, by the learned counsel for the petitioner squarely applies to the facts of this case. Hence following the same, the detention order stands quashed. The habeas corpus petition is allowed. The detenu Prabakar @ Prabakaran S/o. Palanisamy, aged 24 years, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ia/srk
To

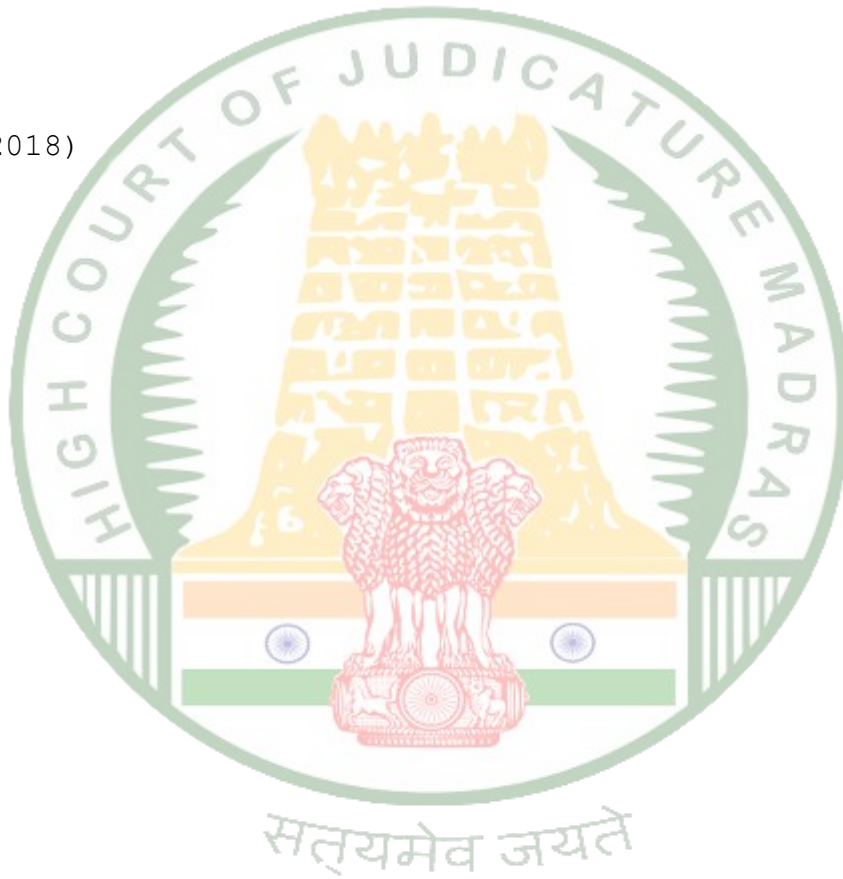
1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
2. The Commissioner of Police,
Salem City, Salem.
3. The Superintendent of Prison,
Central Prison, Salem.

4. The Joint Secretary to Government
Public (law and order)
Fort. St. George
Chennai 9.

5. The Public Prosecutor,
Madras High Court,
Chennai - 104.

H.C.P. No.472 of 2018

RSI (CO)
SP(12/09/2018)



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