

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.18 of 2019

Deepak

.. Petitioner

Vs

1.The State of Tamil Nadu
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records relating to the detention order in Memo No.1044/BCDFGISSSV/2018 dated 17.11.2018 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to Produce the petitioner's brother Thiru.HARISH @OOSI S/o.Kumar, aged about 23 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's brother Thiru.HARISH @ OOSI S/o.Kumar, aged about 23 years the detenu herein set him liberty.

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For Petitioner .. Mr.R.Muthukumar

For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

(Order of the Court was delivered by M.M.SUNDRESH, J.)

The petitioner is the brother of Harish @ Oosi, S/o.Kumar, aged about 23 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.1044/BCDFGISSSV/2018 dated 17.11.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3.Learned counsel for the petitioner submits that in arriving at the conclusion of imminent possibility of the detenu being released on bail, the detaining authority has stated that in a similar case, bail was granted by the Principal District and Sessions Judge, Thiruvallur to one Shanmugapandiyan. In stating so, the detaining authority has relied on the order dated 06.07.2018 in Crl.M.P.No.3177 of 2018.

4.Heard learned Additional Public Prosecutor on the above submission.

5.A perusal of the impugned order informs that the accused in that case had no previous case against his name, whereas in the instant case, the detenu has one previous case. Therefore, the detaining authority had erred in treating the case relied upon and the case of the detenu as similar in nature. As the order of the detaining authority reflects non application of mind, the order under challenge is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.1044/BCDFGISSSV/2018 dated 17.11.2018 passed by the second respondent is set aside. The detenu, namely, Harish @ Oosi, S/o.Kumar, aged about 23 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

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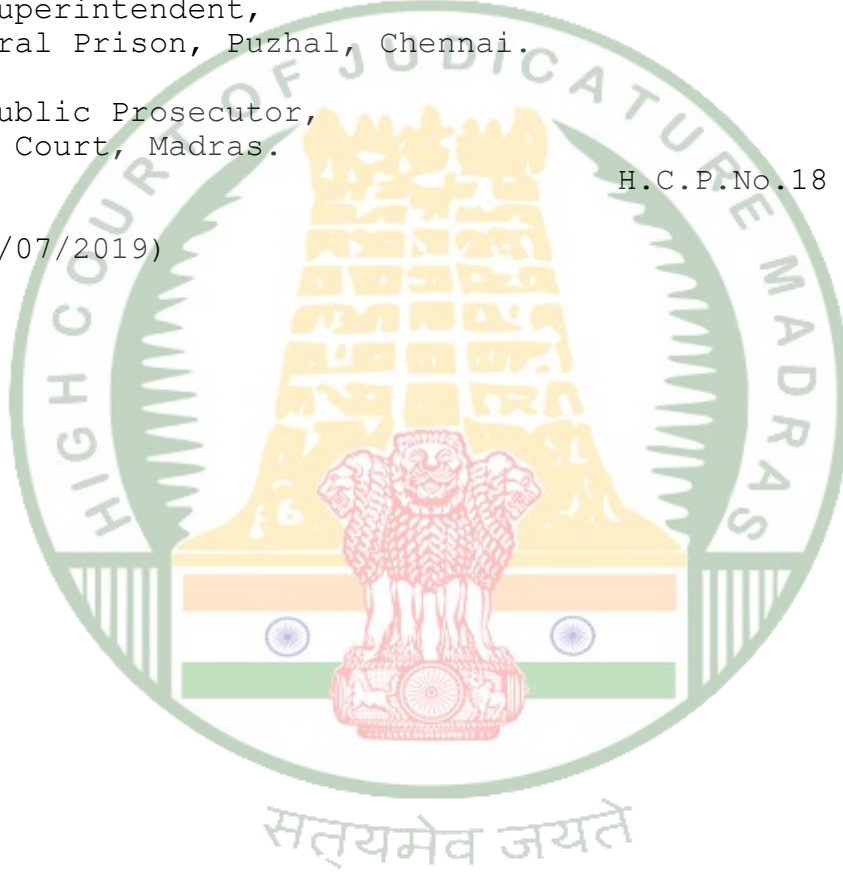
Sub Assistant Registrar

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To

- 1.The State of Tamil Nadu
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.18 of 2019

A.SK(12/07/2019)



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