

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice M. NIRMAL KUMAR

H.C.P. No. 311 of 2019

Thilagavathy

... Petitioner

-vs-

1.The State of Tamil Nadu

Rep. By the Secretary to Government,
Prohibition and Excise Department,
Chennai

2.The District Collector and District Magistrate
of Vellore District,
Vellore - 9.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the order passed by the second respondent in C3/D.O.No.106/2018 dated 08.12.2018 and quash the same and produce the detenu Thiru. Thomas Alva Edison alias Thomas, aged about 27 years, Son of Thiru. Benny Dass, who is detained in Central Prison, Vellore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.B.Sundarapandiyan

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

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, who is the wife of detenu Thomas Alva Edison alias Thomas, Son of Thiru. Benny Dass, aged about 27 years has come up with this habeas corpus petition challenging the detention order passed against her husband by the second respondent C3/D.O.No.106/2018 dated 08.12.2018, detaining him as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

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. Though the order of detention is challenged on various grounds, the main submission of the learned counsel for the petitioner is that the detaining authority, in para 5 of the grounds of detention, while expressing subjective satisfaction with regard to the real possibility of the detenu coming out on bail in the cases in which he was on remand, has observed that the detenu has not filed any bail petition in respect of the ground case in Crime No.354 of 2018 on the file of SIPCOT Police Station but there is likelihood of him coming out on bail by filing bail application before any Court. But the same is not supported by any material. Hence the subjective satisfaction expressed is vitiated.

4. The detaining authority, after referring to the remand of the detenu in the ground case, has chosen to observe that the detenu has not filed bail petition in that case but he may come out on bail by filing bail application before any Court. In the affidavit filed in support of the H.C.P., it is specifically averred that no application for bail was moved on behalf of the detenu in the ground case. In such circumstances, the observation of the detaining authority that the detenu has not moved bail petition in the ground case but there is likelihood of his coming out on bail by filing bail application before some other Court is not supported by material. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention. Hence the subjective satisfaction expressed by the detaining authority in this regard in para 5 of the grounds of detention is vitiated. On this ground alone, the order of detention is vitiated and liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.106/2018 dated 08.12.2018, passed by the second respondent is set aside. The detenu, Thomas Alva Edison alias Thomas, Son of Benny Dass, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

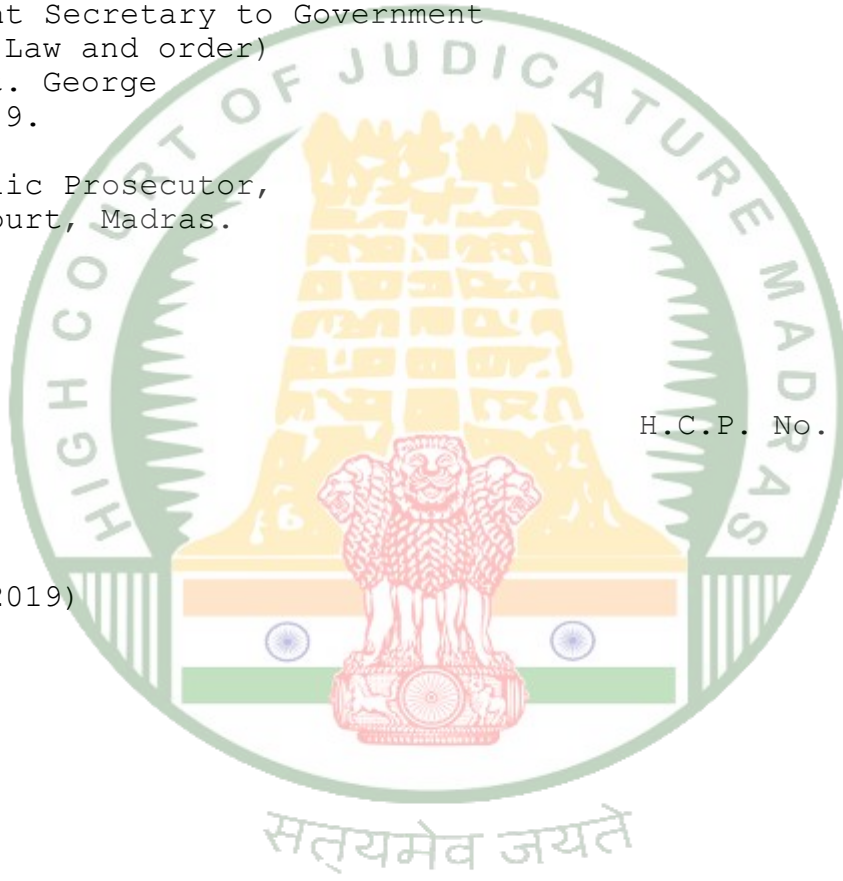
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To:

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate
of Vellore District,
Vellore - 9
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 311 of 2019

BP(CO)
SP(11/07/2019)



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