

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

Coram

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

H.C.P. No. 433 of 2019

Raman

... Petitioner

-vs-

State Rep by:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Salem City, Salem

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in C.M.P.No.3/Goonda/Salem City/2019 dated 31.01.2019 on the file of the Commissioner of Police, Salem City, Salem, the second respondent herein an quash the same as illegal and direct the respondent to produce the detenu Vijayakumar S/o. Raman, aged about 26 years now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

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

ORDER

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

The petitioner is the father of Vijayakumar S/o. Raman, aged about 26 years, who is the detenu. The detenu has been detained by the second respondent by his Memo C.M.P.No.3/Goonda/Salem City/2019 dated 31.01.2019, holding 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. 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 6 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 bail petitions in respect of the case in Crime No.4 of 2019 on the file of Annadanapatty Police Station but the relatives of the detenu are taking steps to take him on bail in the said case. 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 as well as in the adverse cases, has chosen to observe that the detenu has not filed bail petition in Crime No.4 of 2019 but his relatives are taking steps to take him out on bail in the said case. But the same is not supported by any material. In such circumstances, the observation of the detaining authority that the detenu has not moved bail petition in the above case but his relatives are taking steps to take him out on bail is not supported by any 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 6 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 C.M.P.No.3/Goonda/Salem City/2019, dated 31.01.2019, passed by the second respondent is set aside. The detenu, Vijayakumar S/o. Raman, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

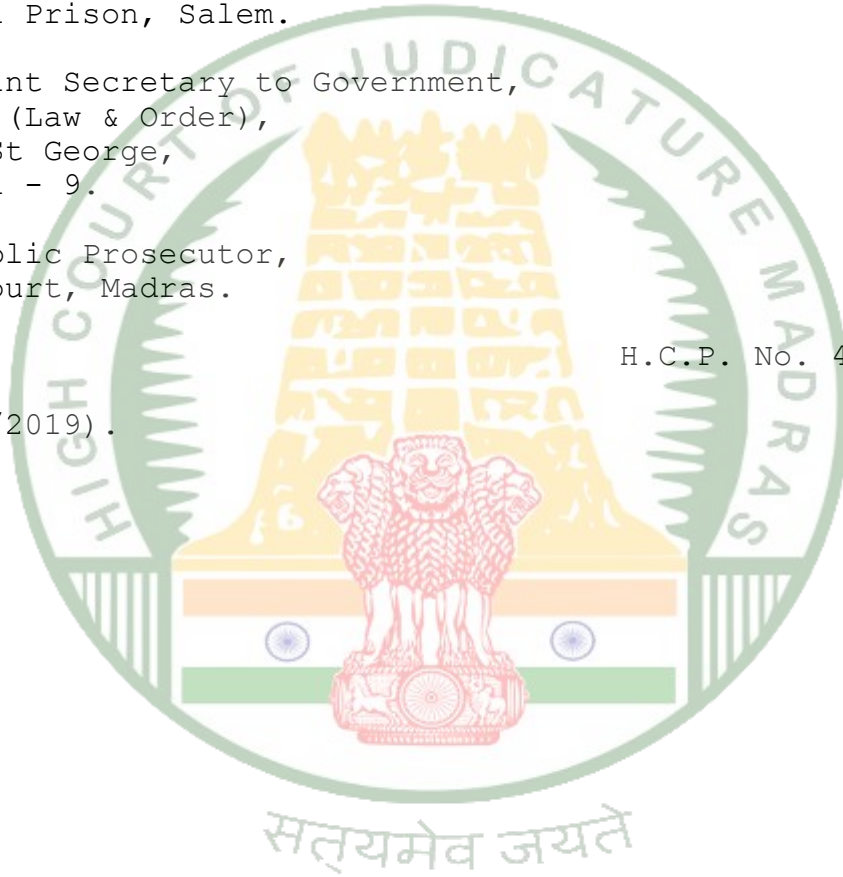
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To:

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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. St George,
Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 433 of 2019

BP(CO)
SSM(29/07/2019).



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