

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.809 of 2019

Lakshmi

..Petitioner

Vs

State rep. by

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

2. The District Magistrate and
District Collector,
Salem District, Salem.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in C.M.P.No.16/GOONDA/C2/2019 dated 31.03.2019 on the file of the District Magistrate and District Collector, Salem District, Salem, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu Alagu @ Thambidurai, S/o.Sengottaiyan, aged about 30 years, now confined at Central Prison, Salem before this 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 mother of the detenu - Alagu @ Thambidurai, S/o.Sengottaiyan, aged about 30 years. The detenu has been detained by the second respondent by his order in C.M.P.No.16/GOONDA/C2/2019 dated 31.03.2019, 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. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focused his argument on the ground that though the detaining authority has observed that the bail petition filed by the detenu in the ground case has been dismissed and he has not filed another bail petition for the said case, he inferred that the detenu may come out on bail in the ground case. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and therefore, subjective satisfaction expressed by the detaining authority is vitiated.

4. The detaining authority, in para 4 of the grounds of detention, while considering the real possibility of the detenu coming out on bail in the case in which he was on remand, has referred to the remand of the detenu in the ground case and proceeded further to observe that the bail petition filed by the detenu in the ground case came to be dismissed. The detaining authority has not mentioned whether another bail petition has been moved either by the detenu or his relatives in respect of the ground case. Therefore, there is no material to show that another bail petition has been moved by the detenu or his relatives in the ground case. Therefore, the subjective satisfaction arrived by the detaining authority is not supported by any material and it vitiates the order of detention. 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.16/GOONDA/C2/2019 dated 31.03.2019, passed by the second respondent is set aside. The detenu, namely, Alagu @ Thambidurai, S/o.Sengottaiyan, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

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

2.The District Magistrate and
District Collector,
Salem District, Salem.

3.The Superintendent,
Central Prison, Salem.

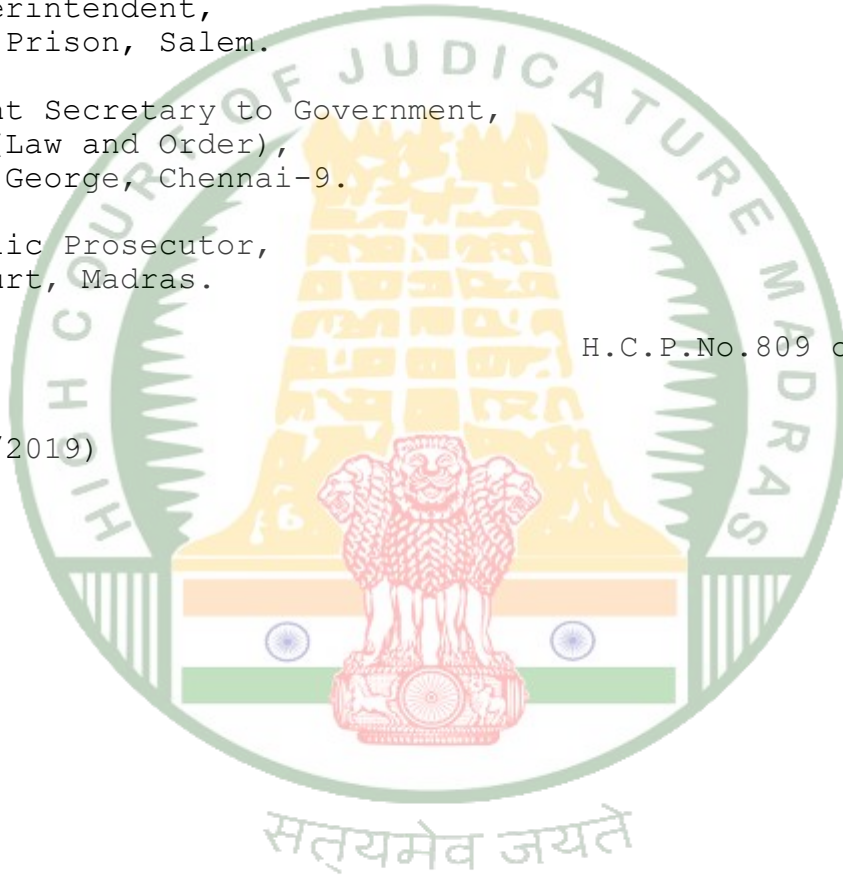
4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.809 of 2019

SPD (CO)

RRS (13/08/2019)



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