

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2198 of 2019

Vijaya

W/o.Shanmugaraj

... Petitioner/Mother of the Detenu

Vs

1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records in connection with the order of second respondent herein in No.620/BCDFGISSSV/2019 dated 25.09.2019 and quash the order of detention passed therein by second respondent herein against the detenu and consequently, direct the respondents herein to produce the body and person of the detenu, by name, Sakthivel, aged 23 years, S/o.Shanmugaraj, now detained at Central Prison, Vellore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Sasikumar

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the mother of the detenu viz., Sakthivel S/o.Shanmugaraj, aged 23 years, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in No.620/BCDFGISSSV/2019 dated 25.09.2019.

the detenu in Crime No.1077 of 2019 on the file of T-14 Mangadu Police Station for an offence u/s.302 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4. Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for petitioner mainly focussed his argument on the ground that the detaining authority while arriving at the subjective satisfaction has relied upon the surrender intimation dated 22.08.2019, in which it has been stated that 'surrender accepted and remanded to judicial custody till 28.08.2019 and to be produced before District Munsif-cum-Judicial Magistrate, Sriperumbudur on 28.08.2019.' However, to establish the production of detenu before the District Munsif-cum-Judicial Magistrate, Sriperumbudur, on the above-mentioned date, no proof has been produced. Learned counsel submits that the same adversely has affected his right of making an effective representation.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. Non-furnishing of the aforesaid document would deprive the detenu the opportunity of making effective representation to the authorities concerned. The same, which amounts to an infringement of right enshrined under Article 22(5) of the Constitution of India, would vitiate the order of detention. For the aforesaid reason, this Court would allow the present petition.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Sakthivel S/o.Shanmugaraj, aged 23 years, in No.620/BCDFGISSSV/2019 dated 25.09.2019, is set aside. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

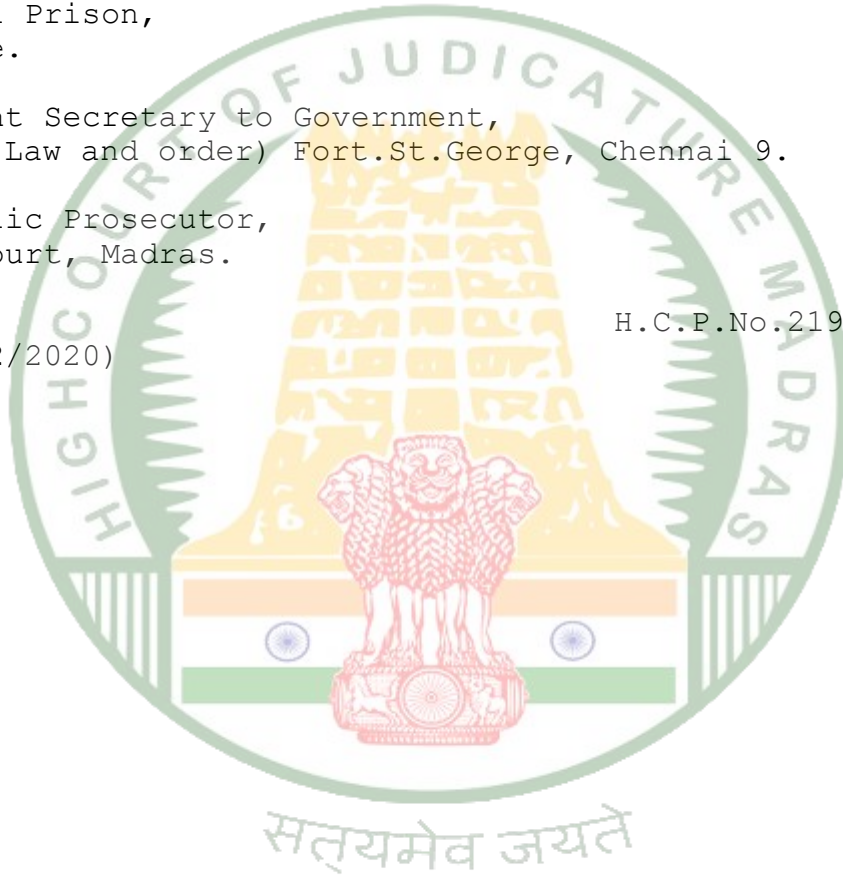
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To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.
- 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.

A.SK(26/02/2020)

H.C.P.No.2198 of 2019



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