

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

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

H.C.P.No.2557 of 2019

Murali
S/o.Raja

... Petitioner/ (Brother of the Detenu)

Vs

The State represented by its

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

2.The District Collector and District Magistrate,
Kancheepuram City,
Kancheepuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention dated 23.06.2019 passed by second respondent in BCDFGISSSV No.47/2019 and quash the same and produce the detenu viz., Hari, aged about 33 years, S/o.Raja, before this Court and set him at liberty and the detenu is now confined at Central Prison II, Puzhal, Chennai.

For Petitioner : Mr.D.Mario Johnson

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 brother of the detenu viz. Hari S/o.Raja, aged 33, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.47/2019 dated 23.06.2019.

2. The detenu came to adverse notice in Crime No.95/2018 on the file of Sunguvarchatram Police Station for offences u/s.34, 201, 120-B, 307 and 302 IPC. The alleged ground case has been registered against the detenu in Crime No.183 of 2019 on the file of Sunguvarchatram Police Station for offences u/s.294(b), 323, 392, 397, 307, 506(ii) IPC r/w 3(1) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. 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. Learned counsel for petitioner submits that though the bail application filed by the detenu is pending, the detaining authority has informed a real possibility of the detenu coming out on bail since in a similar case bail was granted by learned District and Sessions Judge II, Kancheepuram, in C.M.P.No.1564 of 2015 in respect of Crime No.805 of 2015 on the file of Kanchi Taluk Police Station for offences u/s.294(b), 307, 397 and 506 (ii) IPC r/w 3(1) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Learned counsel submits that in the case cited as similar, some of the offences alleged in the ground case are missing. The non-consideration of such aspect reflects non-application of mind.

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

6. As rightly submitted by learned counsel for petitioner, in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, some of the offences alleged in the ground case are missing. Hence, we find that the order of detention suffers from non-application of mind.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Hari S/o.Raja, aged 33, in BCDFGISSSV No.47/2019 dated 23.06.2019, 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.

Sd/-
Assistant Registrar

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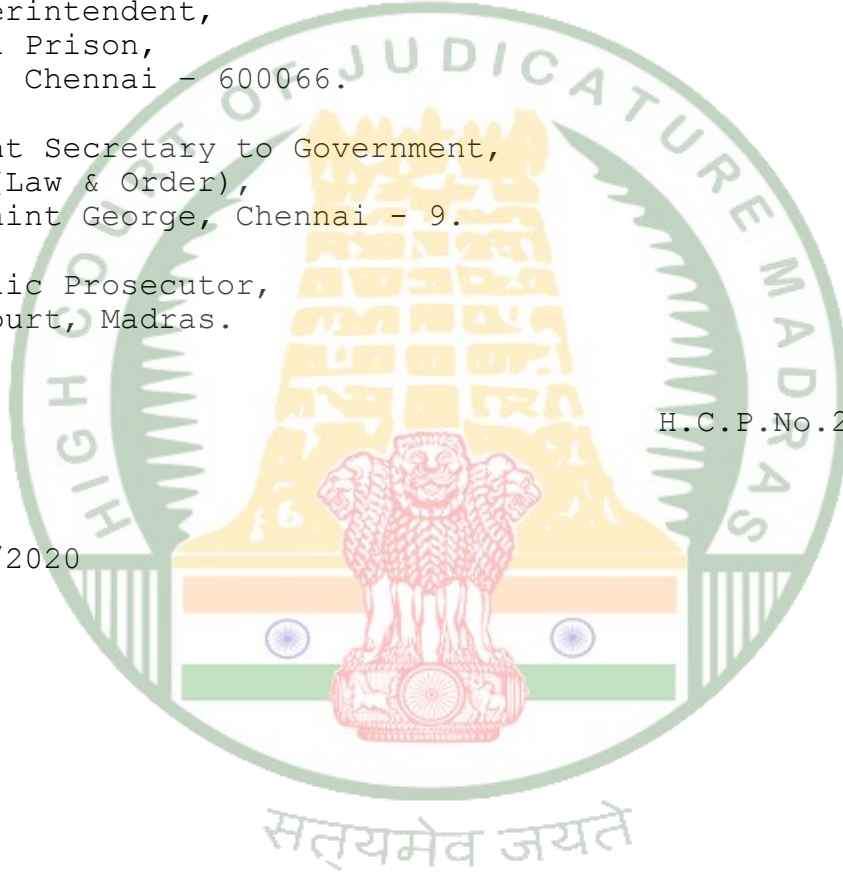
Sub Assistant Registrar

To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600009.
- 2.The District Collector and District Magistrate,
Kancheepuram City,
Kancheepuram District.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai - 600066.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2557 of 2019

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