

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1263 of 2015

K.Prabakaran
S/o.Kathiravan

... Petitioner

Vs.

1. The State of Tamilnadu
represented by the
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
Salem City,
Salem District.

... Respondents

Prayer:- This Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention dated 11.04.2015 passed by the second respondent vide CMP No.29/Goonda/Salem City/2015 and quash the same and further direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

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O R D E R
[Order of the Court was made by S.TAMILVANAN, J.]

Petitioner, who is the detenu, has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in CMP No.29/Goonda/Salem City/2015 dated 11.04.2015.

2. The detenu came to adverse notice in the following cases:-

Sl.No .	Police Station and Crime No.	Sections of Law
1.	Kannankurichi Police Station Crime No.78 of 2015	147, 148, 323, 342, 386, 420 & 506(ii) IPC r/w 114 IPC
2.	Sooramangalam Police Station Crime No.259 of 2015	147, 420, 384, 387, 506(ii), 120(b) IPC r/w section 3 of TNPPDL Act, 1992.

The alleged ground case has been registered against the detenu on 05.03.2015, by the Sub-Inspector of Police, Hasthampatty Police Station, in Crime No.159 of 2015 for offences under Sections 420, 294(b) and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. The contention of learned counsel for petitioner is that while justifying the order of detention on the ground that in a similar case in Crime No.391 of 2013 registered by the Hasthampatty Police Station for offences under sections 147, 148, 323, 324, 506(ii) IPC r/w 3(1) of TNPPDL Act, 1992, anticipatory bail stood granted by learned Principal Sessions Judge, Salem, in C.M.P.No.3583 of 2013, the detaining authority has failed to see that in such case there had been allegation of offence under Tamil Nadu Public Property (Prevention of Loss and Damage), Act, whereas in the ground case of the detenu, there had been no allegation of offence under Tamil Nadu Public Property (Prevention of Loss and Damage), Act. The non-consideration of such vital aspect reflects non-application of mind.

4. Per contra, learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the similar case referred by the detaining authority is not similar to that of the ground case.

5. We have considered the rival submissions.

6. In the order relied upon towards informing that anticipatory bail is granted in the similar case, the allegation of offence under Tamil Nadu Public Property (Prevention of Loss and Damage), Act, is present. However, in the ground case, there had been no allegation of offence under such Act. Therefore, the failure of detaining authority in treating a case which is not similar to the ground case as such, shows lack of objectivity in

arriving at subjective satisfaction. For the aforesaid reason, this Court would allow the present petition.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Prabakaran, S/o.Kathiravan, made in CMP No.29/Goonda/Salem City/2015 dated 11.04.2015, is quashed and the Habeas Corpus Petition is allowed. 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(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Salem City,
Salem District.
3. The Public Prosecutor,
High Court, Chennai.
4. The Superintendent,
Central Prison, Salem.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

EV(CO)
CA(14/09/2015)

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