

IN THE HIGH COURT OF JUDICATURE AT MADRAS
 DATED: 15.06.2015
 C O R A M

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

H.C.P.No.3499 of 2014

Kannamma

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Petitioner

Vs

1. State of Tamil Nadu
 rep. By its Secretary
 Home Prohibition and
 Excise Department
 Fort St. George
 Chennai 600 009.

2. The Commissioner of Police
 Salem City.

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Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records of the detention order in C.M.P.No.65/Goonda/Salem City/2014 dated 13/11/2014 on the file of the second respondent and quash the same and produce the petitioner's son Thiru Venkatesh, S/o. Ramasamy, aged about 25 years, now confined at Central Prison, Salem, and set him at liberty.

For Petitioner : M/s.Karan and Uday

For Respondents : Mr.M.Maharaja
 Addl. Public Prosecutor

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 O R D E R

(Order of the Court was made by S.Tamilvanan,J.)

Challenge is made to the order of detention passed by the second respondent vide C.M.P.No.65/Goonda/Salem City/2014, dated 13.11.2014, whereby the detenu/the son of the petitioner herein, by name,Venkatesh, S/o. Ramasamy, aged about 25 years was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest

Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3. Learned counsel appearing for the petitioner submitted that the detaining authority has stated in paragraph No.5 of the detention order that in similar cases, the accused were granted bail viz., (a) by the learned Principal Sessions Judge, Salem in C.M.P.No.3406/2011 dated 16.11.2011 in respect of Cr.No.1466/2011 on the file of Fairlands (Alagapuram) Police Station for the offence under Sections 307 and 506(ii) IPC and (b) by the learned Principal Sessions Judge, Salem in C.M.P.No.2343/2014, dated 13.06.2012 in respect of Cr.No.267/2012 on the file of Kannankurichi Police Station for the offence under sections 353, 341, 294(b), 506(ii) IPC r/w 3 of TNPPDL Act. The first similar case (Cr.No.1466/2011) referred to by the detaining authority, is a case of attempt of murder due to the dispute between two individuals and the second similar case (Cr.No.267/2012) referred to by the detaining authority, is a case related to communal clash in which the accused had caused damage to Government bus but the ground case is that the accused, at knife point, waylaid the passerby and demanded money and attempted to murder and therefore, the similar cases referred to by the detaining authority are not the same as that of the ground case. The subjective satisfaction arrived at by the Detaining Authority that bail would be granted to the detenu in the above said cases, on the basis of the bail granted in the similar cases, referred to by the Detaining Authority is baseless. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is a real possibility of the detenu coming out on bail in the ground case and in the adverse case is a mere ipse dixit without any cogent materials.

4. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. We have heard the learned counsel for both sides with regard to the facts.

6. It is seen from paragraph No.5 of the grounds of detention that the detenu is in remand in the ground case [Cr.No.323/2014] and in the adverse case [Cr.No. 321/2014] and the bail application filed

by him in respect of Cr.No.321/2014 is pending and the bail application filed by him in respect of Cr.No.323/2014 was dismissed and that the relative of the detenu is taking steps to move bail application in respect of Cr.No.323/2014. The detaining authority has further stated that in similar cases, the accused were granted bail, viz., (a) by the learned Principal Sessions Judge, Salem in C.M.P.No.3406/2011 dated 16.11.2011 in respect of Cr.No.1466/2011 on the file of Fairlands (Alagapuram) Police Station for the offence under Sections 307 and 506(ii) IPC and (b) by the learned Principal Sessions Judge, Salem in C.M.P.No.2343/2014, dated 13.06.2012 in respect of Cr.No.267/2012 on the file of Kannankurichi Police Station for the offence under sections 353, 341, 294(b), 506(ii) IPC r/w 3 of TNPPDL Act . From the booklet, it is seen that in the said two similar cases, the materials produced by the detaining authority would go to show that the first similar case (Cr.No.1466/2011) referred to by the detaining authority, is a case of attempt of murder, due to the dispute between two individual and the second similar case (Cr.No.267/2012) referred to by the detaining authority, is a case related to communal clash, in which, the accused had caused damage to Government bus, but the ground case is that the accused, at knife point had waylaid the passerby and demanded money and attempted to murder and therefore, the similar cases referred to by the detaining authority are not the same as the ground case. Further, the Detaining Authority has arrived at the subjective satisfaction by placing reliance on the similar cases. Therefore, the Detaining Authority, in total non-application of mind, has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case and in the adverse case by referring to and relying upon the bail granted in the similar cases. This non-application of mind on the part of the Detaining Authority vitiates the Detention Order and the said Detention Order cannot be sustained in the eye of law and the same is liable to be set aside. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse case, necessarily would have to be considered by the Court concerned solely on merits.

7. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

8. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

9. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

-sd/-

ASSISTANT REGISTRAR

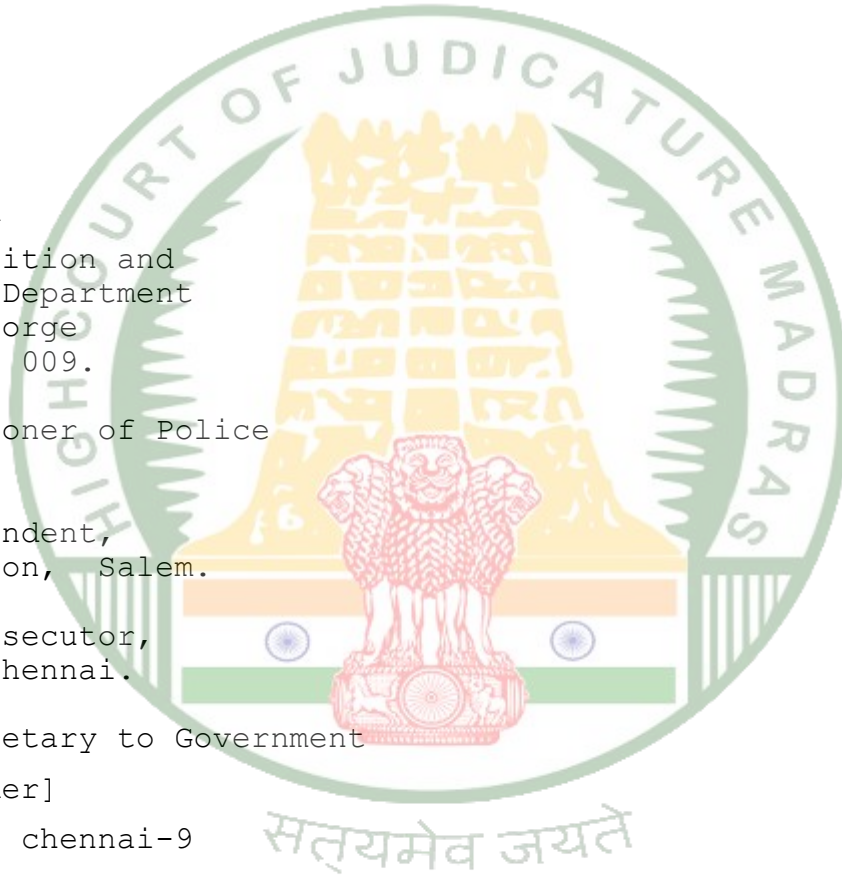
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Sub-Assistant Registrar

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To

- 1.The Secretary
Home Prohibition and
Excise Department
Fort St. George
Chennai 600 009.
2. The Commissioner of Police
Salem City.
3. The Superintendent,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Chennai.
- 5 THE Joint Secretary to Government
public [La & Order]
Fort St.George , chennai-9



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RD 30/06/2015

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