

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.3086/2015

Perumal

..... Petitioner

Vs

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

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

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records in C.M.P.No.47/Goonda/C2/2015, dated 19.11.2015, on the file of the second respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Ramu alias Ramamoorthi, son of Perumal, aged about 34 years, who is now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.J.Ramakrishnan

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.NAGAMUTHU, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C.M.P.No.47/GOONDA/C2/2015, dated 19.11.2015, whereby, the son of the petitioner, by name, Ramu @ Ramamoorthi, Son of Mr.Perumal, aged 34 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, Sexual Offenders,

Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Goonda" as contemplated under Section 2 (f) of Tamil Nadu Act 14 of 1982.

2. Though, many grounds have been raised in the petition, Mr.J.Ramakrishnan, 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.Per contra, Mr.A.N.Thambidurai, 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.

4.We have heard the learned counsel on either side and we have also perused the records carefully.

5. It is seen from the perusal of the detention order, more particularly, paragraph No.4, that the detenu was remanded to judicial custody in connection with Crime No.578 of 2015, registered by Mettur Police Station, for offence under Sections 302, altered into one under Sections 147, 148 and 302 of the Indian Penal Code. It is also seen that in the very same paragraph it has been stated that the detenu had filed Criminal Original Petition No.26237 of 2015, before this Court, seeking bail in the said case and the same is pending. It is further stated in the very same paragraph that in similar case, registered at Salem Town Police Station, in Crime No.1792 of 2011, bail was granted to the accused for offence under Section 302 of the Indian Penal Code and thereby, the Detaining Authority has concluded that there is real possibility of the detenu coming out on bail. In the similar case bail was granted by the Sessions Court; whereas, the bail application filed by the detenu, is pending before this Court. Further, the facts referred to in the similar case are also dis-similar to the case, in which the petitioner moved the bail application before this Court. Therefore, the conclusion arrived at by the detaining authority that the case, where bail was granted by the Sessions Court, is similar to the case, in which the detenu had moved application for bail, before this Court, is not based on factual foundation. It is not known as to why the Detaining Authority has come to the conclusion that there is real possibility of the detenu coming out on bail in a case, which is totally different from the case where bail was granted by the Sessions Court. This only reflects that the Detaining Authority has passed the Detention order in total non-application of mind,

which would vitiate the detention order and hence, the same is liable to be quashed.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 19.11.2015, passed by the second respondent, 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 (CS-IV)

//True Copy//

Sub Assistant Registrar

msk

To

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

1 cc to Mr. J. Ramakrishnan, Advocate, sr.26440

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kra 23.05.2016

H.C.P.No.3086/2015

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