

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

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

H.C.P.No.1012 of 2016

M.Indirani

.. 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,
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.32/Goonda/Salem City/2016, dated 29.4.2016, on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenu Ganapathy, son of Manickam, aged about 25 years, now confined at the Central Prison, Salem, and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu
For Mr.S. Rajanikanth

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Ganapathy, son of Manickam, aged about 25 years, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.32/Goonda/Salem City/2016, dated 29.4.2016, passed by the second respondent, detaining the detenu, under Section 3(1) 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", in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner, as well as the learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

3. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel for the petitioner mainly contends in the similar case relied upon for passing the Detention Order, the provisions are not similar to the ground case against the detenu. It has been pointed out that in the ground case, in Crime No.89 of 2016, on the file of the Salem Town Police Station, and in the adverse case in Crime No.5 of 2016 on the file of the Salem Town Crime Police Station, the provision of Section 395 I.P.C. is found, but in the similar case relied upon by the detaining authority, in Crime No.246 of 2012, on the file of the Salem Town Crime Police Station, the said provision is not found. The learned Additional Public Prosecutor had also conceded the same.

4. Considering the submissions made by the learned counsels appearing for parties concerned and on a perusal of the records available, it is found that the detaining authority had relied on a similar case in Crime No.246 of 2012, for the offence under Sections 341, 392 r/w 397, 427 and 506(ii) I.P.C., wherein bail had been granted to the accused concerned. But, in the impugned detention order, in the adverse case in Crime No.5 of 2016 and the ground case in Crime No.89 of 2016, the cases had been registered for the offence under Section 395 I.P.C., also. Therefore, the similar case relied on by the detaining authority is not similar to the ground case and the adverse case. In such circumstances, we find that there is non-application of mind on the part of the detaining authority, in passing the detention order. Therefore, we are inclined to set aside the detention order.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 29.04.2016, 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/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vvk

To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Salem City, Salem.
3. The Superintendent
Central Prison,
Salem
4. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1012 of 2016

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