

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

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

H.C.P.No.1043 of 2016

Katturani

.. Petitioner

Vs

1.The State of Tamil Nadu
represented by its Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai-9.
2.The Commissioner of Police
Salem City.
3.The Superintendent
Central Prison
Salem-7.

.. Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records in connection with the order of detention passed by the second respondent dated 25.04.2016 in C.M.P.No.28/Goonda/Salem City/2016, under the Tamil Nadu Act 14 of 1982 and to set aside the same and to direct the respondents to produce the detenu, namely, Chelladurai, aged about 29 years, the detenu, now confined in the Central Prison, Salem, before this Court and to set him at liberty.

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For Petitioner : M/s.B.Vasudevan
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M. JAICHANDREN, J.]

This Habeas Corpus Petition has been filed, by the mother of the detenu, namely, Chelladurai, Son of Purusothaman, aged about 29 years, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.28/Goonda/Salem City/2016, dated 25.04.2016, 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, Puzhal, Chennai, and to quash the same and to direct the Respondents to produce the body of the detenu and to 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.105 of 2016, on the file of the Kitchipalayam Police Station, and in the adverse case in Crime No.549 of 2016 on the file of the Kitchipalayam Police Station, the provision of Section 427 I.P.C. is not 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 found. The learned Additional Public Prosecutor had also conceded the same.

4. Considering the submissions made by the learned counsels appearing for the 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 offences 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.549 of 2016 and the ground case in Crime No.105 of 2016, the cases had not been registered for the offence under Section 427 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 25.04.2016, 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rnb

To

1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai-9.

2.The Commissioner of Police
Salem City, Salem

3.The Superintendent
Central Prison
Salem-7.

4 The Joint Secretary to Government
Public (Law & Order)
Fort St. George Chennai 9

5.The Public Prosecutor,
High Court, Madras.

AD(CO)
md(20/01/2017)

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