

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM
and
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.208 of 2016

S.Kalaivani

..Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government
Department of Prohibition and Excise (Home)
Fort St.George, Chennai 600 009.

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

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order in C.M.P.No.7/Goonda/Salem City/2016 dated 21.01.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Rajasekar @ Karate Raja, son of Krishnan, aged about 34 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.A.Ramesh

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

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O R D E R

[Order of the Court was made by G.CHOCKALINGAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C.M.P.No.7/Goonda/Salem City/2016 dated 21.01.2016, whereby the detenu/husband of the petitioner, by name, Rajasekar @ Karate Raja , son of Krishnan, aged 34 years, was ordered to be detained under the provisions

of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, 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".

2.Though many grounds have been raised in the petition, Mr.A.Ramesh, 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 detenu has been remanded in the ground case in Cr.No.367/2015 registered by Kannankurichi Police Station and the bail application filed by him for the above said case in CMP.No.298 of 2016 on the file of the learned Principal Sessions Judge, Salem, is pending. But the Detaining Authority, in the Grounds of Detention, has relied upon a similar case in Cr.No.246 of 2012 registered by Salem Town Crime Police Station, wherein the accused was granted bail by this Court in CrI.OP.No.25955/2012. It is submitted that when reliance is placed on a similar case by the Detaining Authority to arrive at the subjective satisfaction, he has to place reliance only on such case, in which bails is granted by a Court similar to that of the Court/Courts where the bail applications of the detenu are pending and not the order of a superior Court. This is indicative of non-application of mind on the part of the Detaining Authority and thus, the detention order is vitiated on the above sole ground and the same is liable to be quashed.

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.As evidenced from the Grounds of Detention, in particular, paragraph 5, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [Cr.No.367/2015], in which case bail application was pending before the learned Principal Sessions Judge, Salem, in CMP.No.298/2016, by placing reliance on a similar case wherein, bail was granted to an accused in a case in Cr.No.246/2012 registered by Salem Town Crime Police

Station, by this Court in CrI.OP.No.25955/2012. Whenever a bail application in connection with any adverse case or ground case is pending before a lower Court and if the Detaining Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order should be one passed by a Court subordinate to the High Court and not the order of the High Court itself, as has been done in the instant case. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

7.It is 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. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Secretary to Government
The State of Tamil Nadu,
Department of Prohibition and Excise (Home)
Fort St.George, Chennai 600 009.

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

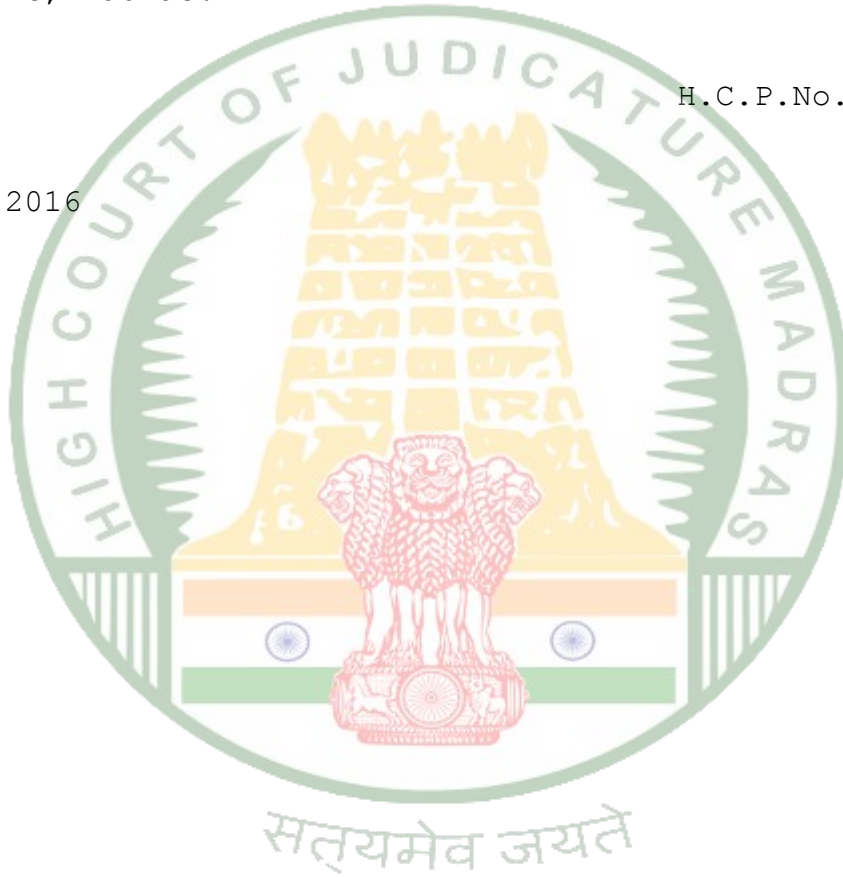
3.The Superintendent,
Central Prison, Salem.

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

5.The Additional Public Prosecutor
High Court, Madras.

H.C.P.No.208 of 2016

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