

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.5.2016

CORAM

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

H.C.P.No. 211 of 2016

Tamilarasi

... Petitioner

Vs.

1.State of Tamil Nadu rep. by
The Secretary to Government,
Prohibition & Excise Department,
Fort St. George, Chennai-600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the detenu Ketthai Sekar @ Press Sekar @ Gunasekaran, son of Mohan, aged 31 years before this Court now confined in the Central Prison, Salem and set him at liberty and to call for the records pertaining to the order of detention in C.M.P.No.4/Goonda/Salem City/2016 dated 08.01.2016 and set aside the same.

For Petitioner : Mr. C.K.M.Appaji

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

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O R D E R

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

The petitioner is the wife of the detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in C.M.P.No.4/Goonda/Salem City/2016.

2. Though many grounds have been raised in the petition, Mr.C.K.M.Appaji, 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. According to the learned counsel appearing for the petitioner, the detenu is in remand in 3rd adverse case in Cr.No.572/2015 and in the ground case in Cr.No.608/2015 registered in Annadanapatty Police Station and the bail application moved on his behalf in Crime No.608 of 2015 is pending for hearing in the Court of Principal Sessions Judge, Salem in C.M.P.No.80 of 2016. The detaining authority has arrived at the subjective satisfaction by placing reliance on a similar case registered at Salem Town Crime Police Station in Cr.No.246 of 2012 under Sections 341, 392 r/w 397, 427 and 506 (ii) IPC, wherein bail was granted by this Court in CrI.O.P.No.25955 of 2012. Further, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case and that if the detenu comes out on bail he will indulge in such further activities, which are prejudicial to the maintenance of public order. The learned counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case is pending. When a bail application is pending, then there is no presumption that the detenu would be granted bail. If that be so, there is no imminent possibility of the detenu coming out on bail on the basis of the bail granted in the similar case. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in the ground case.

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 could be evidenced from the Grounds of Detention, the detenu is in remand in 3rd adverse case in Cr.No.572/2015 and in the ground case in Cr.No.608/2015 registered in Annadanapatty Police Station and the bail application moved on his behalf in Crime No.608 of 2015 is pending for hearing in the Court of Principal Sessions Judge, Salem in C.M.P.No.80 of 2016. If that

be so, there is no imminent possibility of the detenu coming out on bail in the ground case. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai-600 009.

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

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

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

5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No.28710

H.C.P.No.211 of 2016

SV(CO)
CA(01/06/2016)