

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. 459 of 2016

Raji @ Arputharaj .. Petitioner/Detenu

vs.

1. Government of Tamilnadu, rep. by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St. George, Chennai 600 009.

2. The Commissioner of Police
Salem City .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in C.M.P.No.3/Goonda/Salem City/2016 dated 05.01.2016 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body, of the Petitioner Raji @ Arputharaj, S/o.Balu @ Arockiasamy @ Arockiaraj, aged 23 years now confined in Central Prison, Salem.

For Petitioner : Mr. R.Subhadra Devi

For Respondents : Mr.M.Maharaja

Addl. Public Prosecutor

O R D E R

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

The petitioner, who is the detenu herein 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.3/Goonda/Salem City/2016, dated 05.1.2016.

2. Though many grounds have been raised in the petition, Ms.R.Subhadra Devi, the learned counsel appearing for the

petitioner, confines her 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 ground case in Cr.No.1187/2015 registered in Sooramangalam Police Station and he has moved bail application in C.M.P.No.4232 of 2015 before the Court of Principal Sessions Judge, Salem and the same is pending as on the date of the passing of the detention order. 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 to Thiru. Duraisamy by this Court in Crl.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 ground case in Cr.No.1187/2015 registered in Sooramangalam Police Station and he has moved bail application in C.M.P.No.4232 of 2015 before the Court of Principal Sessions Judge, Salem and the same is pending as on the date of the passing of the detention order. If that be so, there is no imminent possibility of the detenu coming out on bail in the said 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.

-s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamilnadu,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Salem City.
3. The Additional Public Prosecutor
High Court, Madras.
4. The Superintendent,
Central Prison, Salem
5. The Joint Secretary, Public(Law and Order)
Fort St.George chennai-9

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