

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-09-2016

CORAM:

THE HON'BLE MR. JUSTICE A.SELVAM  
and  
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

HCP No.868 of 2016

Mrs. K. Vinothini

... Petitioner

Vs.

1. The State of Tamil Nadu  
represented by its Secretary  
Home, Prohibition and Excise Department  
Fort St. George, Chennai - 9

2. The Commissioner of Police  
Salem City, Salem

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, calling for the records relating to the order of detention made in C.M.P.No.81/GOONDA/SALEM CITY/2015 dated 04-11-2015 passed by the second respondent and set aside the same and direct the respondents to produce the detenu Kannan S/o.Subramani @ Ramachandran, now confined in Central Prison, Salem before this Court and set him at liberty and pass orders.

For Petitioner : Mr. M.L. Ramesh

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

O R D E R

[Order of the Court was made by A.SELVAM, J.]

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, praying to call for records, relating to detention order dated 04-11-2015 passed in C.M.P.No.81/GOONDA/SALEM CITY/2015 by the detaining authority, who has been arrayed as the second respondent herein, against the detenu by name Kannan @ Ramachandran and quash the same.

2. The Inspector of Police, Hasthampatty Police Station as sponsoring authority, has submitted an affidavit to the

detaining authority, wherein it is averred that the detenu has involved in the following adverse cases:

- i. Hasthampatty Police Station, Cr.No.228 of 2015, Section 379 IPC
- ii. Salem Govt. Hospital Police Station, Cr.No.22 of 2015, Section 379 IPC
- iii. Annadanapatty Police Station, Cr.No.459 of 2015, Section 379 IPC
- iv. Annadanapatty Police Station, Cr.No.487 of 2015, Section 379 IPC

3. Further it is averred in the petition that on 11-10-2015 one Balamurugan S/o. Denapillai Nadar as defacto complainant has given a complaint against the detenu in Annadanapatty Police Station and the same has been registered in Crime No.489 of 2015 under Sections 341, 392 r/w 397, 427, 506(ii) IPC and ultimately prayed to invoke Act 14/1982 against the detenu.

4. The detaining authority, after perusing the averments made in the affidavit and other connected documents, has derived subjective satisfaction that the detenu is a habitual offender and ultimately branded him as a 'Goonda', by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the wife of the detenu, as petitioner.

5. Even though this petition has been posted today for filing counter finally on the side of the respondents counter has not been filed. Under the said circumstances, the present petition is disposed of on merits on the basis of the available materials on record.

6. The learned counsel appearing for the petitioner has sparingly contended that in the detention order, it has been specifically contended that on 11-10-2015, one Balamurugan S/o. Denapillai Nadar as defacto complainant has given a complaint wherein the name of the detenu has not been specifically mentioned and on the same day, the Inspector of Police, Annadanapatty Police has arrested the detenu and recovered some money. But no identification has been done by the defacto complainant. Under the said circumstances, the detaining authority has not applied his mind properly at the time of passing the impugned order and therefore, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that the detenu has already involved in four adverse cases and further, on 11-10-2015 on the basis of the complaint given by one Balamurugan as defacto complainant, the Inspector of Police,

Annadanapatty Police Station has arrested the detenu and he has voluntarily given a confessional statement and on the basis of his confessional statement, certain properties have been recovered and the detaining authority after considering the rich bad antecedents of the detenu has rightly passed the detention order and therefore, the detention order in question does not call for any interference.

8. Based upon the divergent submissions made on either side, this Court has to meticulously analyse the entire detention order passed by the detaining authority. Of course, it is true that the detenu has already involved in four adverse cases. But the ground case has been registered on the basis of the complaint dated 11-10-2015 alleged to have been given by one Balamurugan S/o. Denapillai Nadar wherein it has been simply stated that one male aged 30 years has committed the alleged crime. On the basis of the said complaint, a case has been registered in Crime No.489 of 2015 under Sections 341, 392 r/w 397, 427, 506(ii) IPC.

9. Further, it is seen from the detention order that on 11-10-2015, the Inspector of Police, Annadanapatty Police Station has arrested the detenu and he has given voluntary confessional statement and on the strength of the same, certain properties have been recovered. But, as rightly pointed out on the side of the detenu, no identification has been done by the defacto complainant, who has given the complaint dated 11-10-2015. Since no identification has been done by the defacto complainant, the Court can very well infer that the detaining authority has not applied his mind before passing the impugned detention order and that itself would affect the rights of the detenu under Article 22(5) of the Constitution of India and on that ground alone the detention order in question is liable to be quashed.

In fine, the habeas corpus petition is allowed and the detention order dated 04-11-2015 passed in C.M.P.No.81/GOONDA/SALEM CITY/2015 is quashed. The respondents are directed to set the detenu, by name Kannan S/o.Subramani @ Ramachandran, at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

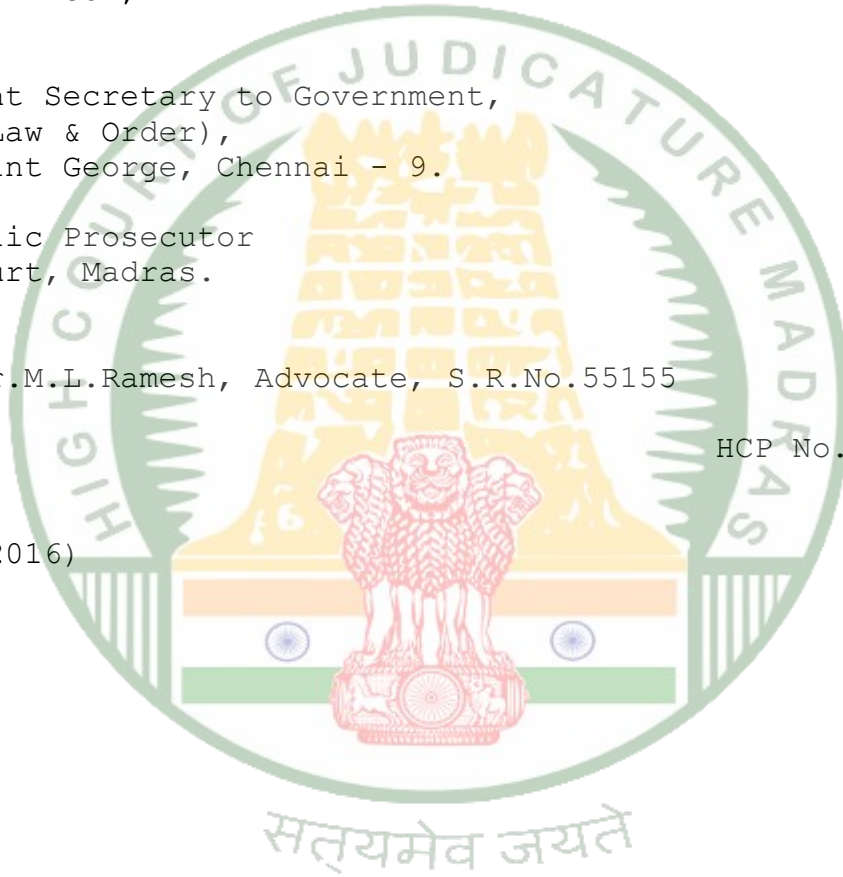
glp

- 1.The Secretary  
Home, Prohibition and Excise Department  
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police  
Salem City, Salem.
- 3.The Superintendent,  
Central Prison,  
Salem.
- 4.The Joint Secretary to Government,  
Public(Law & Order),  
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor  
High Court, Madras.

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.55155

HCP No.868 of 2016

MG(CO)  
CA(27/09/2016)



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