

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2016

CORAM

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

H.C.P.No.875 of 2016

Aruna

.. Petitioner

Vs

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

2.The Secretary to Government,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
Fort St.George, Chennai-9.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the 1st respondent herein concerned in CMP.No.23/Goonda/Salem City/2016, dated 09.04.2016 and set aside the order of detention passed therein against the detenu by namely Kirubakaran, Hindu aged about 37 years, who is the husband of the petitioner herein, quashing the same and setting him liberty now detained in Central Prison, Salem.

For Petitioner : Mr.R.Anbarasu
For Respondents : Mr.V.M.R.Rajentran, APP

सत्यमेव जयते

O R D E R

[Order of the Court was made by S.BASKARAN, J.]

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This Habeas Corpus Petition has been filed by the wife of the detenu to issue a Writ of Habeas Corpus, challenging the detention order in CMP.No. 23/Goonda/Salem City/2016, dated 09.04.2016 passed by the 1st respondent, detaining her husband/the detenu herein, namely, Kirubakaran, aged about 37 years, S/o.Kulasekaran, 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), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda".

2. We have heard the learned counsel appearing on behalf of the petitioner and 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, Mr.R.Anbarasu, the learned counsel appearing on behalf of the petitioner, submitted that the detenu was arrested in the ground case in Crime No.110 of 2016 and was also arrested in adverse cases in Crime Nos.111 of 2016, 112 of 2016, 113 of 2016. Bail applications filed by the detenu in Crl.M.P.Nos.1981 of 2016, 1982 of 2016, 1983 of 2016 and 1980 of 2016 in respect of the above cases, are pending on the file of the learned Judicial Magistrate No.III, Salem. But, the Detaining Authority has arrived at the subjective satisfaction, that the detenu would be granted bail, in respect of the above cases, by relying upon a similar case registered by Kannankurichi Police Station Crime No.70 of 2015 for offences u/s.420, 342, 323, 395 and 506[ii] IPC, wherein, bail was granted to an accused by this Court, in Crl.O.P.No.6161 of 2015. Learned counsel submitted that the offences committed by the accused in the similar case is under section u/s.420, 342, 323, 395 and 506[ii] IPC, whereas, the offence committed by the detenu in the ground case in Crime No.110 of 2016 is u/s.468, 471, 406, 420 and 506[iii] IPC and that this is indicative of non-application of mind on the part of the Detaining Authority as the offences are not the same so as to arrive at the subjective satisfaction. Hence, the learned counsel had submitted that the detention order is vitiated and the same is liable to be quashed.

4. The said submissions made by the learned counsel appearing on behalf of the petitioner, had not been refuted by the learned Additional Public Prosecutor.

5. It is noted from the records available, that the detenu was remanded to judicial custody, in connection with Shevapet Police Station Crime No.110 of 2016. While so, the Detaining Authority has concluded that in similar case, in Kannankurichi Police Station Crime No.70 of 2015, bail was granted to the accused in that case and therefore, there is real possibility of the detenu coming out on bail, in connection with Shevapet Police Station Crime No.110 of 2016. 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.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in CMP.No.23/Goonda/Salem City/2016, dated 09.04.2016, passed by the 1st 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 (CSIII)

True Copy

Sub-Assistant Registrar

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To

- 1.The Commissioner of Police,
Salem City, Salem District.
- 2.The Secretary to Government,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 3.The Superintendent of Police,
Central Prison, Salem.
4. The Joint Secretary to Government
Public Law and Order Fort St.George
Chennai
- 5.The Additional Public Prosecutor,
High Court, Madras.

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H.C.P.No.875 of 2016

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