

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

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

H.C.P.No.885 of 2016

Uthamaraja

... Petitioner/Brother of
the Detenu

Vs

1. State of Tamil Nadu
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in C.M.P.No.25/Goonda/Salem City/2016, dated 16.4.2016, on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenu Periyasamy, son of Palanisamy, aged about 32 years, now confined at the Central Prison, Salem, and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

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

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ORDER

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

This Habeas Corpus Petition has been filed by the brother of the detenu, namely, Periyasamy, son of Palanisamy, son of 32 years, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.25/Goonda/Salem City/2016, dated 16.4.2016, passed by the second respondent, detaining the detenu, 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), branding him as a "Goonda", in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner, as well as 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, the learned counsel for the petitioner contends that the detention order has been passed for a period of 12 months, when the same is not permissible. But, the same has been refuted by the learned Additional Public Prosecutor, by stating that the detention order was passed properly. However, the learned counsel appearing for the petitioner states that in the similar case relied upon for passing the Detention Order, the provisions are not similar to the ground case against the detenu. It has been pointed out that in the ground case, in Crime No.19 of 2016, on the file of the Salem Town Crime Police Station, and in the adverse case in Crime No.5 of 2016 on the file of the Salem Town Crime Police Station, the provision of Section 395 I.P.C. is found, but in the similar case relied upon by the detaining authority, in Crime No.246 of 2012, on the file of the Salem Town Crime Police Station, the said provision is not found. The learned Additional Public Prosecutor had also conceded the same.

4. Considering the submissions made by the learned counsels appearing for parties concerned and on a perusal of the records available, it is found that the detaining authority had relied on a similar case in Crime No.246 of 2012, for the offence under Sections 341, 392 r/w 397, 427 and 506(ii) I.P.C., wherein bail had been granted to the accused concerned. But, in the impugned detention order, in the adverse case in Crime No.5 of 2016 and the ground case in Crime No.19 of 2016, the cases had been registered for the offence under Section 395 I.P.C., also. Therefore, the similar case relied on by the detaining authority is not similar to the ground case and the adverse case. 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.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 16.04.2016, 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(J)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
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.R.Sankarasubbu, Advocate, S.R.No.62222

H.C.P.No.885 of 2016

NM I(CO)
CA(08/12/2016)

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