

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2017

CORAM

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

H.C.P.No.1090 of 2017

Meena

.. Petitioner

Vs

1.State of Tamil Nadu,
Rep. By its Secretary to Government
Prohibition and Excise Department,
Fort St.George, Chennai -9.

2.The Commissioner of Police
Salem City, Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to produce the body of the detenu namely, Velayutham, Son of Palanivelu, aged about 24 years before this Hon'ble Court and set him at liberty forthwith, by calling for the records pertaining to the detention order in C.M.P.No.16/Goonda/Salem City/2017 dated 07.04.2017 passed by the 2nd respondent, quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.A.Esakkiappan

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

ORDER

[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 the records relating to the detention order passed in C.M.P.No.16/Goonda/Salem City/2017 dated 07.04.2017 by the detaining authority, against the detenu by name, Velayutham, aged 24 years, S/o.Palanivelu, 202, Veera Vanchi Street, Kalarampatty, Salem -15 and quash the same.

2. The Inspector of Police, Annadanapatty Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu has involved in the following adverse cases:-

1. Annadanapatty Police Station, Crime No.355 of 2016, registered under Sections 341, 363 and 506(ii) of Indian Penal Code altered into Sections 120(b), 109, 147, 148, 323, 364, 302 and 201 of Indian Penal Code;

2. Annadanapatty Police Station, Crime No.86 of 2017, registered under Sections 294(b) and 506(ii) of Indian Penal Code;
3. Annadanapatty Police Station, Crime No.87 of 2017, registered under Section 379 of Indian Penal Code; and
4. Annadanapatty Police Station, Crime No.88 of 2017, registered under Section 379 of Indian Penal Code

3. Further, it is averred in the affidavit that on 12.03.2017, at about 09.00 hours, one Ananth aged 34 years S/o.Purusothaman, 185-B, Mettu Street, Dadagapatty, Salem, as defacto complainant, has given a complaint to the Sub-Inspector of Police, Annadanapatty Police Station, wherein, it is alleged to the effect that in the place of occurrence, by showing a deadly weapon, the detenu has forcibly taken away a sum of Rs. 550/- from the custody of the defacto complainant and also threatened him. Under the said circumstance, a case has been registered in Crime No.89 of 2017 under Sections 392, 397, 336 and 506(ii) of Indian Penal Code and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

4. The Detaining Authority, after perusing the averments made in the affidavit and other connected documents, has derived a subjective

satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as "Goonda" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the mother of the detenu, as petitioner.

5. On the side of the respondents, counter affidavit has not been filed. Under such circumstance, this Habeas Corpus Petition is disposed of on merits on the basis of the available materials on record.

6. The learned counsel appearing for the petitioner has contended that in Page 4 of the grounds of detention, it has been mentioned like thus: "The Inspector of Police, Annadanapatty PS took the accused Thiru.Velayutham on police custody, while he was on judicial custody in Central Prison, Salem who was remanded on 15.09.2016 in connection with Kondalampatty PS Crime No.319 of 2016 and interrogated him. Thiru.Velayutham pleaded guilty of the offence in this case. In this case, the accused Thiru.Velayutham was released on conditional bail vide CMP No.6/2017 dated 18.01.2017 by the Principal Sessions Judge, Salem. In this case, the recovered articles were sent to the Court under Form 95. In this case, Charge Sheet was filed on 17.12.2016 before the Court. The case is pending trial before the Court". Whereas, in the detention order, no mention has been made in respect of Kondalampatty PS

Crime No.319 of 2016 and the same has also not been shown as one of the adverse cases and further CMP No.6 of 2017 is not related to Kondalampatty Police Station Crime No.319 of 2016. The Detaining Authority, without applying his mind properly has erroneously observed as mentioned supra and the same would affect the rights of the detenu and therefore, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended to the effect that the Sponsoring Authority has submitted all the relevant materials to the detaining authority and the detaining authority, after perusing all the relevant materials has rightly derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed the impugned Detention Order and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8. As pointed out earlier, all the adverse cases as well as the ground case are related to Annadanapatty Police Station.

9. As rightly observed on the side of the petitioner in Page 4 of the detention order, it is mentioned to the effect that the detenu has been arrested on 15.09.2016 in connection with Kondalampatty Police Station

Crime No.319 of 2016 and subsequently, as per orders passed in CMP No.6 of 2017, conditional bail has been granted on 18.01.2017. In fact, the Kondalampatty Police Station Crime No.319 of 2016 has not been shown as one of the adverse cases. Further, this Court has closely perused the order dated 18.01.2017 passed in CMP No.6 of 2017, wherein, Kondalampatty Police Station Crime No.319 of 2016 does not find place. Therefore, it is quite clear that the detaining authority has not applied his mind properly. Since the detaining authority has not applied his mind properly and passed the impugned detention order, the same is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 07.04.2017 passed in C.M.P.No.16/Goonda/Salem City/2017 by the second respondent against the detenu by name, Velayutham, aged 24 years, S/o.Palanivelu, 202, Veera Vanchi Street, Kalarampatty, Salem -15, is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

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[A.S., J.]

[P.K., J.]

05.09.2017

svki

To

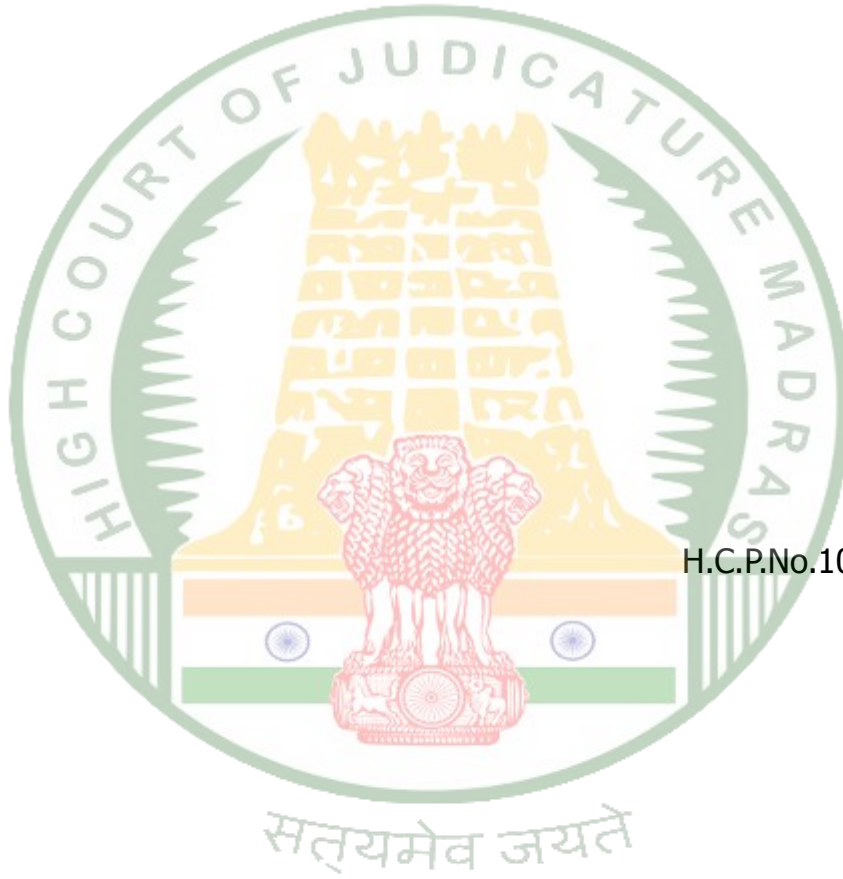
- 1.The Secretary to Government
State of Tamil Nadu,
Prohibition and Excise Department,
Fort St.George, Chennai -9.
- 2.The Commissioner of Police
Salem City, Salem.
- 3.The Superintendent
Special Prison ,
Salem.
- 4.The Public Prosecutor,
High Court, Madras.



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A.SELVAM, J.
and
P.KALAIYARASAN, J.

(svki)



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