

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1411 of 2017

Prasanth ... Petitioner/Son of the detenue

Vs.

1. The Commissioner of Police,
Salem City, Salem.
2. The Secretary to Government
Government of Tamilnadu, (Home),
Prohibition and Excise Department,
Fort St. George, Chennai-600009.
3. The Superintendent,
Central Prison, Salem,
Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records of the 1st respondent concerned in C.M.P.No.59/Goonda/Salem City/2017 dated 26.07.2017 setting aside the order of detention passed therein against the detenue by name Araimookkan Selvam @ Selvakumar S/o Sundar Rajan, quashing the same and direct him to produce before this Court and setting him at liberty now detained in Central Prison, Salem, Salem District.

For Petitioner : Mr.R. Rajan

For Respondents : Mr. V.M.R.Rajentran

Addl. Public Prosecutor

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

1. The petitioner is the son of the detenu, i.e., Araimookkanselvam @ Selvakumar, Male, aged about 47 years. The detenu has been detained by the first respondent by his order in No.C.M.P.No.59/Goonda/Salem City/2017 dated 26.07.2017, holding

him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel for the petitioner would submit that the detaining authority has failed to see that the detainee is not a goonda and he has never acted in any manner prejudicial to the maintenance of the public order and he has no bad antecedents in the past. The learned counsel for the petitioner would further submit that only on the basis of single incident, without proper application of mind the detaining authority has passed the order in a hurried and in a hasty manner. There is no material to show that the detainee had indulged in such unlawful and illegal activities.

5. The learned counsel for the petitioner would submit that in Cr.No.517 of 2017 of Sooramangalam Police station, the bail application filed by the detainee was dismissed by the Principal Sessions Judge, Salem in C.M.P.No.2554 of 2017 and the another bail application filed by the detainee was pending before this Court at the relevant point of time. Therefore, the detaining authority inferred that there is a possibility of the detainee coming out on bail and passed the detention order. All these facts squarely established the non application of mind of the detaining authority.

6. Per contra, the learned Additional Public Prosecutor while reiterating the averments 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.

7. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in Cr.No.517 of 2017 of Sooramangalam Police station, the bail application filed by the detainee was dismissed by the Principal Sessions Judge, Salem and the another bail application filed by the detainee was pending before this Court in CrI.O.P.No.14139 of 2017 at the relevant point of time. Further a similar case in Cr.No.246 of 2012 of Salem Town Police Station, the detainee was granted bail. Only on the ground that pending the bail application before the Court, detaining authority arrived at a conclusion that there is real possibility of his coming out on

bail, would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that when a bail application is pending then it is only a logical conclusion that there is likelihood of the person in custody would be released on bail. Further, there is no counter filed in this case since the notice taken by the learned Additional Public Prosecutor on 02.08.2017. In such view of the matter, the impugned detention order is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.59/Goonda/Salem/ City/2017, dated 26.07.2017, passed by the first respondent is set aside. The detenu, i.e., Tr. Araimookkanselvam @ Selvakumar, aged about 47 years S/o Sundarrajan, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ggs

To

1. The Commissioner of Police,
Salem City, Salem.
2. The Secretary to Government
Government of Tamilnadu, (Home),
Prohibition and Excise Department,
Fort St. George, Chennai-600009.
3. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Fort St.George,
Chennai-9
4. The Superintendent,
Central Prison, Salem,
Salem District.
5. The Public Prosecutor
High Court, Madras.

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