

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2017

CORAM

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

H.C.P.No.255 of 2017

Selvi

.. Petitioner

Vs

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

2.The District Collector and District Magistrate,
Salem District,
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to direct the respondents to produce the body of the detenu by name Saminathan, aged 49 years, S/o.Kandasamy, presently confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 22.01.2017 in CMP.No.05/Goonda/C2/2017 passed by the 2nd respondent, quash the same.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.V.M.R.Rajentren,
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 the detention order passed in CMP.No.05/Goonda/C2/2017 dated 22.01.2017 by the Detaining Authority against the detenu by name, Saminathan, aged 49 years, S/o.Kandasamy, residing at Meyyanur Panankadu, Edanganasalai Village, Sankari Taluk, Salem District and quash the same.

2. The Inspector of Police, Mac Donald Choultry 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 case :

- i. Mac Donald Choultry Police Station Crime No.551/2016 registered under Sections 147, 148, 294[b], 324, 332, 353, 427, 379, 307 of IPC and Section 3[1] of TNPPDL Act.

3. Further, it is averred in the affidavit that on 17.12.2016, one Sivashanmugam, Village Administrative Officer, Bit-1, Edanganasalai Village, Sankari Taluk, Salem District, as de facto complainant has given a complaint, wherein, it is alleged to the effect that the detenu and others have formed an unlawful assembly and also threatened him as well as general public and also damaged public properties. Further, they attempt to murder the de facto complainant and at such circumstances, a case has been registered in Crime No.552/2016 under Sections 147, 148, 336, 431, 435, 341, 324, 294[b], 332, 353, 427, 307 of IPC and Section 3[1] of TNPPDL Act 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 arrived to 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 wife of the detenu as petitioner.

5. Despite repeated adjournments, counter has not been filed and therefore, the present petition is disposed of on merits on the basis of available materials on record.

6. Learned counsel appearing for the petitioner has meticulously contended to the effect that in the grounds of detention, at paragraph No.1, it has been specifically stated to the effect that the present detenu has filed C.M.P.No.205/2017 and the same has been allowed on 21.07.2017 under a common order. But, in the booklet at page No.92, it is clearly stated that C.M.P.No.205/2017 has been filed by one Karadi and therefore, the Detaining Authority has not applied his mind properly and at such circumstances, the Detention Order in question is liable to be quashed.

7. Per contra, learned Additional Public Prosecutor has also equally contended to the effect that the present detenu has already filed a bail application and subsequently, he has been released on bail. But, erroneously in the detention order, it has been mentioned that C.M.P.No.205/2017 has been filed by the

present detenu and the same would not affect his rights and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8. It is seen from the records that at paragraph No.1 of the grounds of detention order, it has been specifically stated that a bail application in C.M.P.No.205/2017 has been filed by the present detenu and the same has been disposed of by way of passing a common order. But, as rightly pointed out on the side of the petitioner, at booklet page No.92, a bail application has been filed in C.M.P.No.205/2017 by one Karadi. Therefore, it goes without saying that the Detaining Authority has not applied his mind properly. Since the Detaining Authority has not applied his mind properly before passing the impugned detention order, this Court is of the view that the detention order in question is liable to be quashed.

9. In fine, this petition is allowed. The Detention Order dated 22.01.2017 passed in CMP.No.05/Goonda/C2/2017 by the Detaining Authority against the detenu by name, Saminathan, aged 49 years, S/o.Kandasamy, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2.The District Collector and District Magistrate,
Salem District, Salem.

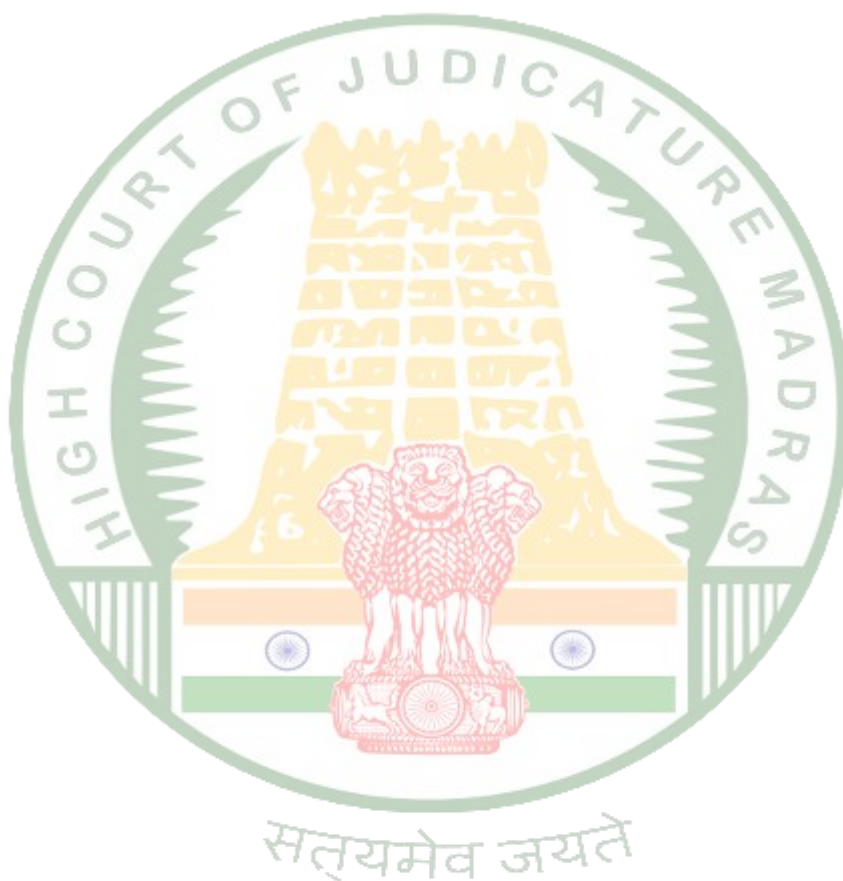
3.The Superintendent,
Central Prison, Salem.
[in duplicate for communication to the detenu]

4.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

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