

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2017

CORAM

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

H.C.P.No.26 of 2017

Kanaga

... Petitioner

Vs

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

2. The Commissioner of Police
Salem City

3. The Superintendent
Central Prison
Salem-7

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the detention of petitioner's son John @ Chanakiya, aged 27 years, S/o.Samidoss, presently detained in Central Prison, Salem under Section 14/1982, as a "GOONDA" vide the detention order dated 12.12.2016 in C.M.P.No.90/Goonda/Salem City/2016 directing to produce body or the person of the detenu before this Court and thereafter set him at liberty from the Central Prison, Salem.

For Petitioner : Mr.B.Vasudevan

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 the records

relating to the detention order passed in C.M.P.No.90/Goonda/Salem City/2016 dated 12.12.2016, by the Detaining Authority against the detenu by name, Thiru John @ Chanakiya, aged 27 years, S/o.Samidoss, residing at No.43, Sundar Street, Kitchipalayam, Salem -15 and quash the same.

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

i) Kitchipalayam Police Station, Crime No.93 of 2015, registered under Sections 147, 148 and 302 of the Indian Penal Code, altered into Sections 147, 148, 120(b), 341, 302 and 506 (ii) of Indian Penal Code.

3. Further, it is averred in the affidavit that on 18.11.2016, one Harish, S/o.Madeswaran, as defacto complainant, has given a complaint in Salem Town Police Station wherein it is alleged that on the same day, at about 10 hours, two persons have shown deadly weapon and forcibly taken a sum of Rs.1500/- from his pocket and also threatened the defacto complainant. Under the said circumstance, a case has been registered in Crime No.487 of 2016 under Sections 392 r/w.397 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 considering the averments made in the affidavit and other connected materials, 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, a counter has been filed, wherein, it is averred to the effect that most of the averments made in the petition are false and the Sponsoring Authority has submitted all the materials records to the Detaining Authority and the Detaining Authority, after considering all the materials, 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 therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has sparingly contended to the effect that on the side of the detenu, a representation has been given, but the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the Detention Order need not be quashed.

8. On the side of the respondents, a proforma has been submitted, wherein, it has been clearly stated that in between column Nos.7 and 9, 6 clear working days are available and no explanation has been given on the side of the respondents with regard to such delay and that the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore, the Detention Order in question is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 12.12.2016 passed in C.M.P.No.90/GOONDA/Salem City/2016 by the second respondent against the detenu by name, Thiru John @ Chanakiya, aged 27 years, S/o.Samidoss, residing at No.43, Sundar Street, Kitchipalayam, Salem -15 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

gpa

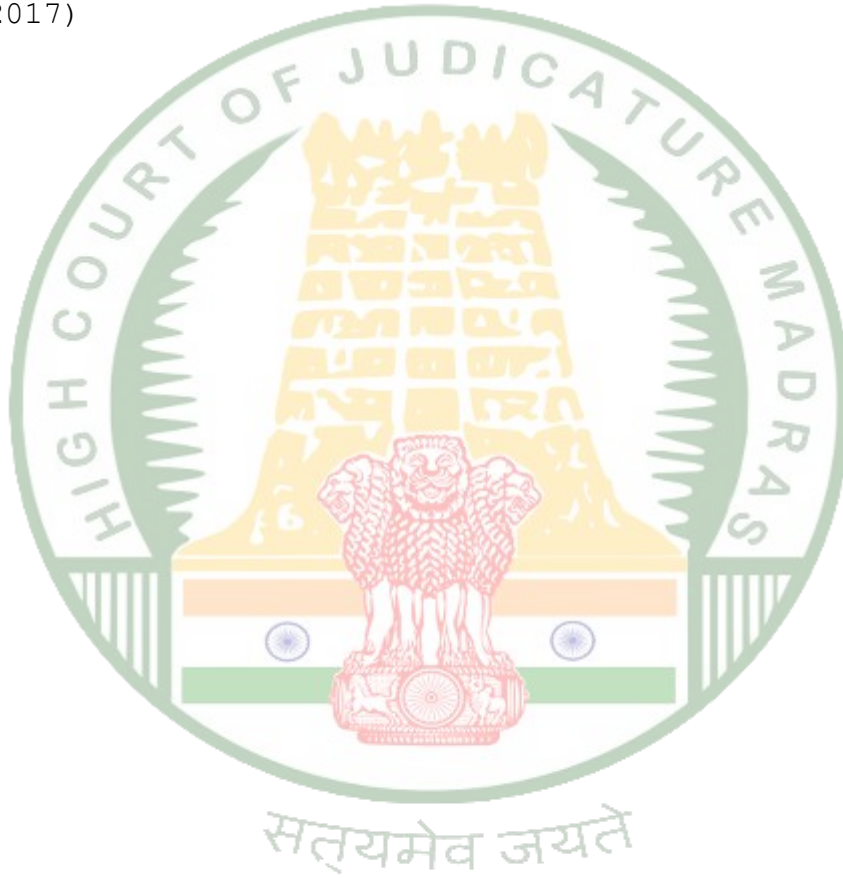
To

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Fort St. George
Chennai
2. The Commissioner of Police
Salem City
3. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai-9.

4. The Superintendent
Central Prison
Salem-7
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.26 of 2017

RR(CO)
VR(18/07/2017)



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