

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2017

CORAM

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

H.C.P.No.567 of 2017

Lakshmanan

.. Petitioner

Vs

1.The Secretary to Government,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
O/o.The Commissioner of Police [Goondas Section],
Salem City.

3.The Superintendent,
Central Prison, Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records connected with the order of the 2nd respondent herein C.M.P.No.5/GOONDA/Salem City/2017 dated 2.2.2017 against the petitioner / detenu, namely Lakshmanan, S/o.Nagappan, aged 28 years, 40 Feet Road, Azhagappan Street, Ammapet, Salem, who is confined at Central Prison, Salem, set aside the same and consequently direct the respondents to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.R.Chellappan

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 C.M.P.No.5/GOONDA/Salem City/2017 dated 02.02.2017 by the Detaining Authority against the detenu by name, Lakshmanan, S/o.Nagappan, aged 28 years, 40 Feet Road, Azhagappan Street, Ammapet, Salem and quash the same.

2. The Inspector of Police, Veeranam 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 :

- i. Sankari Police Station, Crime No.445 of 2015, registered under Sections 457 and 511 of Indian Penal Code;
- ii. Pallipalayam Police Station, Crime No.12 of 2016, under Sections 457 and 380 of Indian Penal Code; and
- iii. Ammapet Police Station, Crime No.4 of 2017 under Sections 457 and 380 of Indian Penal Code.

3. Further it is averred in the affidavit that on 03.01.2017, one Siranjeevi, aged 28 years, S/o.Ramu, Moolakadai Bus Stop, D.Perumpalayam, Salem, has given a complaint in Veeranam Police Station against the detenu wherein it is alleged to the effect that in the place of occurrence, the detenu has unlawfully detained the defacto complainant and also demanded money and further he caused panic in the minds of the general public. Under the said circumstance, a case has been registered in Crime No.4 of 2017 under Sections 341, 387 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 documents, has arrived at 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 detenu himself, as petitioner.

5. Despite repeated adjournments, the respondents have not filed counter. Under such circumstance, this Habeas Corpus Petition is disposed of on merits on the basis of available records.

6. Learned counsel appearing for the petitioner has contended to the effect that in the Detention Order it has been explicitly stated to the effect that ground case has been registered in Crime No.4 of 2017, Veeranam Police Station, under Sections 341, 387 and 506(ii) of Indian Penal Code, whereas in the remand order it has been erroneously mentioned as Crime No.7 of 2017 and the same would affect the rights of the detenu and therefore, the Detention Order in question is liable to be quashed.

7. Per Contra, learned Additional Public Prosecutor has represented that actually a case has been registered in Crime No.4 of 2017 under Sections 341, 387 and 506(ii) of Indian Penal Code, but due to oversight, in the remand order, crime number has been erroneously mentioned as Cr.No.7 of 2017 and the same would not cause any prejudice to the detenu and therefore, the contention put forth on the side of the petitioner/detenu cannot be accepted.

8. It is an admitted fact that the ground case has been registered in Crime No.4 of 2017 under Sections 341, 387 and 506(ii) of Indian Penal Code on the file of Veeranam Police Station. As rightly pointed out on the side of the petitioner/detenu, in the remand order, the crime number has been erroneously mentioned as Crime No.7 of 2017 instead of Crime No.4 of 2017. the Detaining Authority, without looking into the vital defect found in the remand order, has erroneously passed the impugned Detention Order. Therefore, it goes without saying that the Detention Authority has not applied his mind properly and the same would affect the rights of the detenu and therefore, the Detention Order in question is liable to be quashed.

10. In fine, this petition is allowed. The Detention Order dated 02.02.2017 passed in C.M.P.No.5/Goonda/Salem City/2017 by the Detaining Authority against the detenu by name, Lakshmanan, S/o.Nagappan, aged 28 years, 40 Feet Road, Azhagappan Street, Ammapet, Salem is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
 - 2.The Secretary to Government,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
Fort St. George, Chennai-9.
 - 3.The Commissioner of Police,
O/o.The Commissioner of Police [Goondas Section],
Salem City.
 - 4.The Superintendent,
Central Prison, Salem.
[in duplicate for communication to the detenu]
 - 5.The Public Prosecutor,
High Court, Madras.
- +1cc to M/s.Chellappan, Advocate, S.R.No.54770

H.C.P.No.567 of 2017

MV(CO)
CU(02/08/2017)



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