

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.630 of 2017

S.Gomathi

... Petitioner

Vs.

1. The Commissioner of Police,
Salem City,
Salem District.
2. State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St. George, Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the 1st respondent herein concerned in C.M.P.No.12/Goonda/Salem City/2017 dated 20.03.2017 and set aside the order of detention passed therein against the detenu by namely Seeni @ Seenivasan, S/o.Irayan Chettiyar, aged about 42 years, who is the husband of the petitioner herein, quashing the same and set him at liberty now detained in Central Prison, Salem, Salem District.

For Petitioner : Mr.Senthilvel
for Mr.S.Suresh

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

ORDER

(Order of the Court was made by N.SATHISH KUMAR, J)

The petitioner is the wife of the detenu, namely, Seeni @ Seenivasan, S/o.Irayan Chettiyar, male, aged about 42 years. The detenu has been detained by the first respondent by his order in C.M.P.No.12/Goonda/Salem City/2017 dated 20.03.2017, holding him to be a "Goonda", as contemplated under 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. The learned counsel for the petitioner would submit that the Detaining Authority has passed the order of detention on the ground that in Crime No.555 of 2014, bail was granted to the co-accused and hence, there is imminent possibility of the detenu to come out on bail in the said case. However, no bail application has been filed by the petitioner so far. Hence, it is submitted that the Detaining Authority has passed the order of detention mechanically without application of mind.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit 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.

5. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending in the adverse cases and the ground case. If that be so, the subjective satisfaction arrived at by the detaining authority 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 no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. Further, the facts involved in the case relied on by the detaining authority as a similar case are totally different. In that case, stringent condition was imposed while granting bail. In such view of the matter, the impugned detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.12/Goonda/Salem City/2017 dated 20.03.2017, passed by the first respondent is set aside. The detenu, namely, Seenii @ Seenivasan, S/o.Irayan Chettiyar, male, aged about 42 years, 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.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Commissioner of Police,
Salem City,
Salem District.

2.The Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise (XVI) Department
Fort St. George, Chennai - 600 009.

3.The Superintendent,
Central Prison,
Salem.

(In duplicate for communication to the detenu)

4. The Public Prosecutor,
Madras High Court,
Chennai.

5. The Joint Secretary to Government
Public(Law and order)
Fort. St. George
Chennai 9.



H.C.P.No.630 of 2017

SP(23/10/2017)

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