

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2017

CORAM

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

H.C.P.No.2570 of 2016

Gokila .. Petitioner

Vs

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

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

... 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 detenu Selvam @ Edappady Selvam, aged 26 years, S/o.Rajendran, before this Hon'ble Court now confined in the Central Prison, Salem and set him at liberty and to call for the records pertaining to the order of detention in C.M.P.No.77/Goonda/Salem City/2016 dated 24.10.2016 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.V.M.R.Rajentren,  
Additional Public Prosecutor

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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.77/Goonda/Salem City/2016 dated 24.10.2016 by the Detaining Authority against the detenu by name, Selvam @

Edappady Selvam, aged 26 years, S/o.Rajendran and quash the same.

2. The Inspector of Police, Kannankurichi 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. Erode North Police Station Crime No.284/2015 registered under Sections 457 and 380 of Indian Penal Code.
- ii. Erode North Police Station Crime No.305/2015 registered under Sections 457 and 380 of Indian Penal Code.
- iii. Erode Karungalpalayam Police Station Crime No.410/2016 registered under Sections 457 and 380 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 31.08.2016, one Kandasamy, S/o.Raju, as de facto complainant has given a complaint against the detenu in Kannankurichi Police Station, wherein, it is stated to the effect that in the place of occurrence, the detenu has snatched a sum of Rs.1,200/- from the de facto complainant by showing a deadly weapon. Under such circumstances, a case has been registered in Crime No.384/2016 under Sections 341, 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 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 mother of the detenu as petitioner.

5. In the counter filed on the side of the respondents, it is averred to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority after considering the habitual nature of the detenu, has rightly branded him as goonda by way of passing the impugned Detention Order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that on the basis of complaint alleged to have been given by one Kandasamy on 31.08.2016 against the detenu in Kannankurichi Police Station, a case has been registered in Crime No.384/2016 under Sections 341, 392 r/w 397 and 506[iii] of Indian Penal Code and on 01.09.2016, the detenu has been arrested and on the basis of his confession statement,

at about 12.30 hrs, properties have been seized under a cover of Mahazar. But, in the booklet at page No.116, it is specifically stated to the effect that the Mahazar has been prepared on the same day at 02.30 p.m. The detaining authority has not applied his mind properly in passing the impugned Detention Order and therefore, the same is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor has contended to the effect that a complaint has been registered on 31.08.2016 against the detenu in Kannankurichi Police Station Crime No.384/2016 under Sections 341, 392 r/w 397 and 506[ii] of Indian Penal Code and on 01.09.2016, the detenu has been arrested and on the basis of his confession statement, properties have been seized on the same day at 12.30hrs under a cover of Mahazar. But erroneously, time has been mentioned as 02.30 p.m. and the same could not affect the rights of the detenu and therefore, the Detention Order in question need not be quashed.

8. It is an acknowledged principle of law that case properties have been seized only under a cover of Mahazar. In the instant case even in the Detention Order, it has been specifically stated that the properties have been seized at 12.30 hrs, but in the Mahazar, it is stated as 02.30 p.m. Therefore, it is quite clear that the Detaining Authority has not applied his mind properly before passing the impugned Detention Order and the same itself would sufficient for quashing the same.

9. In fine, this petition is allowed. The Detention Order dated 24.10.2016 passed in C.M.P.No.77/Goonda/Salem City/2016 by the Detaining Authority against the detenu by name, Selvam @ Edappady Selvam, aged 26 years, S/o.Rajendran is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

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

3.The Public Prosecutor,  
High Court, Madras.

4.The superintendent, central prison,Salem.

5.The Joint Secretary to Government,  
Public (Law & Order) Fort St.George,  
Chennai-600 009.

+1cc to Mr.CKM.Appaji, Advocate SR.No.52073

H.C.P.No.2570 of 2016

RSK(CO)  
GN(26/07/2017)



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