

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

AND

THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

H.C.P. No. 1355 of 2018

N.Nigar Sultana

...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 Commissioner of Police,  
Salem City.

3.The Superintendent,  
Central Prison,  
Salem.7.

...Respondents

PRAYER:Habeas Corpus Petition under Article 226 of the  
Constriction of India, to issue a Writ of Habeas Corpus, call  
for the entire records leading to the detention of petitioner's  
son Azar @ Azarudheen, aged 32 years, son of Niyasutheen, 27-  
B, 7<sup>th</sup> cross, Rajaram Nagar, Hasthampatty, Salem 7, presently  
detained in Central Prison, Salem, under Act 14/1982, as a  
"GOONDA" vide the detention order dated 25.06.2018 in C.M.P.No.  
31/ "GOONDA"/Salem City/2018 or the file of the 2<sup>nd</sup> Respondent  
herein, directing to produce the person or body of the Detenue  
before this Hon'ble Court and thereafter set him at liberty from  
the Central Prison, Salem.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.CMP No.31/Goonda/Salem City/2018, dated 25.06.2018, whereby the detenu, by name, Azar @ Azarrudeen, son of Niyasudeen, aged about 32 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. The detenu has come to adverse notice in the following cases:-

| S.No. | Police Station & Crime No.                          | Sections of Law                                          |
|-------|-----------------------------------------------------|----------------------------------------------------------|
| 1.    | Hasthampatty Police Station<br>Crime No.201 of 2018 | 392 r/w 397, 506<br>(ii) IPC @ 395,<br>397, 506 (ii) IPC |
| 2.    | Pallapatty Police Station<br>Crime No.256 of 2018   | 341, 392, r/w 397,<br>376 (D), 506 (ii)<br>IPC           |

The ground case has been registered against the detenu in Crime No.176/2018 on the file of Inspector of Police, Azhagapuram Police Station, for offences 392 r/w 397 IPC @ 395, 397, 506 (ii) IPC. The detention order has been passed by second respondent in No.CMP No.31/Goonda/Salem City / 2018.

3. We have heard learned counsel for petitioner and the learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

4. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

5. Further, the Grounds of Detention would reveal that 2 adverse cases have been registered against the detenu and a ground case was also registered against him in Crime No.176/2018 for offences 392 r/w 397 IPC @ 395, 397, 506 (ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case as also in the adverse cases. Therefore, the probability of release of the detenu imminently does not arise. Hence, we are inclined to set aside the detention

order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.CMP No.31/Goonda/Salem City / 2018, passed by the second respondent is set aside. The detenu, namely, Azar @ Azarrudeen, son of Niyasudeen, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Police,  
Salem City.

3.The Superintendent,  
Central Prison,  
Salem. 7.

5. The Joint Secretary,  
Public (Law and order) Department,  
Secretariat, Chennai - 600 009.

6.The Public Prosecutor  
High Court, Madras.

+lcc to Mr.B.Vasudevan, Advocate sr.no.74024

H.C.P. No. 1355 of 2018

svn(co)  
nr 10/12/2018



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