

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.1488 of 2018

G.Prabu

... Petitioner

-Vs-

1.The Commissioner of Police
Salem District, Salem.

2.The State of Tamil Nadu,
rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, 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 relating to the detention order dated 28.05.2018 passed by the first respondent herein in his Office ref. C.M.P.No.26/Goonda/Salem City/2018 quash the same and direct the respondents to produce the petitioner's cousin brother Manikandan, son of Mani, Vellaiya Gounder Kadu, Ramalingam Hospital backside, Attayampatty, Salem, Salem District presently undergoing detention in the Central Prison, Salem, under Section 3(1) 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 before this Hon'ble court and set at liberty.

For Petitioner : Mr.P.Mani
For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

The petitioner, who is the cousin brother of the detenu, namely, Manikandan, Son of Mani, age 30 years, challenges the impugned order of detention, dated 28.05.2018 in

C.M.P.No.26/GOONDA/SALEM CITY/2018 detaining his brother as "GOONDA", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

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

S.No.	Police Station & Crime No.	Section of Law
1.	Mallasamudram Police station Crime No.264/2017	457 & 380 IPC
2.	Mallasamudram Police Station Crime No.266/2017	457 & 380 IPC
3.	Ammamet Police Station Crime No.301/2018	379 IPC

The ground case has been registered against the detenu in Crime No.308/2018 on the file of the Inspector of Police, Ammapet Police Station for offences u/s 341, 392 R/W 397, 506(ii) IPC. The detention order has been passed by first respondent in C.M.P.No.26/GOONDA/SALEM CITY/2018 on 28.05.2018.

3. 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.

4. Though several grounds have been raised in the Habeas Corpus 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. The Grounds of Detention would reveal that 3 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.308/2018 for the offences u/s.341, 392 R/W 397, 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case. 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 C.M.P.No.26/GOONDA/SALEM CITY/2018 dated 28.05.2018, passed by the first respondent is set aside. The detenu, namely, Manikandan, Son of Mani, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

kmi

To:

1. The Commissioner of Police
Salem District, Salem.
2. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
3. The Superintendent,
Central Prison, Salem.
4. The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor
High Court, Madras.

+1cc to Mr.P.Mani, Advocate sr.76283

WEB COPY

H.C.P.No.1488 of 2018

srg 30/11/2018