

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.723 of 2018

K.Poomani

.. Petitioner

Vs.

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention C.M.P.NO.5/GOONDA/SALEM CITY/2018 dated, 07/02/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Kannan, S/O.Manimaran, aged 32 years, who is presently detained in the Central Prison, Salem to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.R.Rajan

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 first respondent vide Proceedings in C.M.P.No.5/Goonda/Salem City/2018 dated 07.02.2018, whereby the detenu, by name, Kannan, son of Manimaran, 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	Cr.No. & Police Station	Offences
1.	Cr.No.338/2017 Kannankurichi Police Station	302 IPC

The ground case has been registered against the detenu in Cr.No.63 of 2018 on the file of Inspector of Police, Kitchipalayam Police Station for offences u/s 341, 294(b), 307 and 506(ii) IPC. The detention order has been passed by first respondent in C.M.P.No.5/Goonda/Salem City/2018.

3. 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.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.63/2018 on 22.01.2018; whereas the detention order was passed on 07.02.2018, i.e. Nearly after a lapse of 16 days. This inordinate delay in passing of detention order would vitiate the same. Further, the Grounds of Detention would reveal that one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.63/2018 for the offences u/s. 341, 294(b), 307 and 506(ii) IPC. Admittedly, the detenu has not moved any bail applications in the ground case as also in the adverse cases. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the ground case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Hence, we are of the view that the detention order is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.5/Goonda/Salem City/2018 dated 07.02.2018, passed by the first respondent is set aside. The detenu, namely, Kannan, son of Manimaran, 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

kmi

To

- 1.The Commissioner of Police,
Salem City Police,
Salem.
- 2.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Superintendent
Central Prison, Salem.
- 5.The joint Secretary to Government,
Public (Law & Order)
Fort.st.Geroge, Chennai-9

+1cc to Mr.R.Rajan, Advocate, S.R.No.58120

H.C.P.No.723 of 2018

RK(CO)
GSP(17/09/2018)

WEB COPY