

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.05.2018

CORAM

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.98 of 2018

Mani
W/o.Venkatachalam

... Petitioner

Vs

1.The State of Tamil Nadu
Rep. by the Secretary to the Government,
Prohibition & Excise Department,
Fort St.George, Chennai-600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the respondents to produce the detenu Govindaraj, S/o.Venkatachalam, aged 24 years, 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 the 2nd respondent in C.M.P.No.91/Goonda/Salem City/2017 dated 26.12.2017 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji
For Respondents : Mr.R.Ravichandran

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

The Habeas Corpus Petition on hand has been filed challenging the order of detention issued by the 2nd respondent in C.M.P.No.91/Goonda/Salem City/2017 dated 26.12.2017.

2.The learned counsel appearing on behalf of the petitioner strenuously contended that there is absolute non application of mind on the part of the Detaining Authority, at the time of passing the order of detention. Secondly, there is a delay in considering the representation submitted on behalf of the detenu by the competent authority. The learned counsel is of the opinion that on these two grounds, the order of detention is liable to be assailed.

3.The learned Government Advocate appearing on behalf of the State opposed the contentions by stating that there is absolutely no delay on the part of the Detaining Authority. So also, on the part of the competent authorities, while considering the representation submitted on behalf of the detenu. In this regard, the memo filed by the Under Secretary to the Government states that the representation dated 02.01.2018 had been received by the authorities on 03.01.2018. On the same day, remarks were called for from the authorities on 03.01.2018 itself. The remarks were

received on 17.01.2018 and the relevant file was submitted on the next day on 18.01.2018. The Under Secretary to the Government dealt with the file on the very same day on 18.01.2018 and the Deputy Secretary to the Government also approved the file on 18.01.2018 itself. It is pertinent to note that on receipt of the remarks, the file was submitted and the same was scrutinized and approved both by the Under Secretary and by the Deputy Secretary on the very same day on 18.01.2018. The file was sent for approval of the Hon'ble Minister and the same was signed on 22.01.2018. Accordingly, the letter of rejection was issued on 22.01.2018 and the same was sent to the detenu on 23.01.2018. Thus, there was no delay on the part of the competent authorities in dealing with the representation submitted on behalf of the detenu.

4. On a careful perusal of the order of detention issued by the Commissioner of Police, Salem City, we are of the considered opinion that two adverse cases were registered against the detenu. The first case in crime No.1004/2017 by the Sooramangalam Police Station was registered on 10.11.2017 for offences under Section 392 and 397 of IPC. The second adverse case against the detenu was registered by the same Police Station in crime No.1003/2017 for offences under Section 392 and 397 of IPC and both the adverse cases were registered on the same day on 10.11.2017. The ground case was registered on 12.11.2017.

5. On a careful reading of the entire allegations set out in the ground case, which resulted detention stipulates that on 12.11.2017 at 07.45 hrs, when the victim was walking near railway goods shed, two accused disclosed their names as Kadirvel and Govindaraj, waylaid him and abused him in filthy language and threatened with a knife and dire consequences, they snatched a cell phone and cash of Rs.680/- from him. When the victim raised an alarm, the pedestrians rushed and tried to catch those accused. At that time, accused Kadirvel rotated the knife, while accused Govindaraj picked up soda bottles from the neighbouring shop, dashed them on the road and threatened the crowd with dire consequences. The women and children who were passing there, squattered on different directions. The shopkeepers closed their shops and there was a traffic jam for a short while. However, one among the the crowd, caught the accused Kadirvel, while Govindaraj escaped from the scene of crime.

6. Under these circumstances, we are of the considered opinion that the nature of the allegations are certainly causing a concern over the public order, the way in which the accused had acted in a public place, certainly affects the public tranquility and peace. This being the view of this Court, we are of the opinion that the case of the petitioner is not a fit one for the purpose of considering the ground as such, raised in this petition.

7. In respect of the ground of non application of mind, the learned counsel for the petitioner has stated that the date of arrest has not been mentioned in the ground case. However, the learned Government Advocate clarified that the details of arrest are very well enclosed in the booklet served to the detenu. Mere non quoting of the date of arrest, will not vitiate the Detention Order. Non quoting of date of arrest in the Detention Order will not any way affect the fundamental rights of the detenu.

8. Considering the limited scope for the purpose of ensuring the fundamental rights enshrined under the Constitution of India, such a ground cannot be considered for the purpose of releasing the detenu, when the allegations set out in the ground case is of serious in nature, affecting the public peace and tranquility. This being the factum of the case, we are not inclined to consider the other grounds raised in this petition. Accordingly, this Habeas Corpus Petition stands dismissed.

[S.M.S, J.] [S.R.T, J.]
02.05.2018

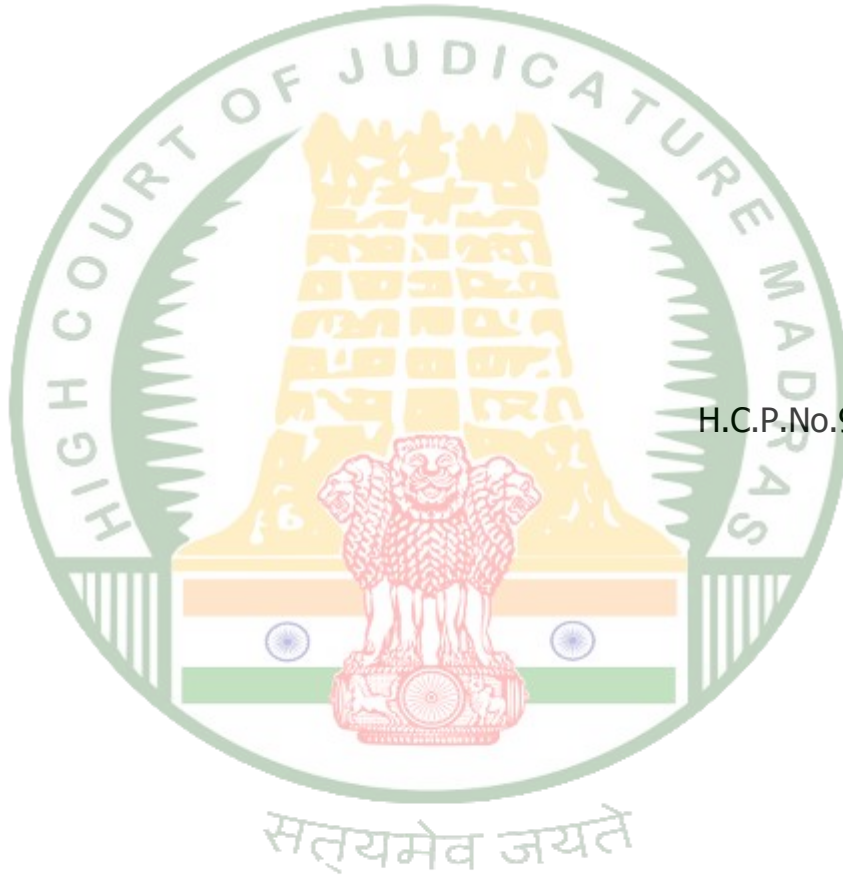
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Index : Yes
To

1. The Secretary to the Government,
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai-600 009.

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

S.M.SUBRAMANIAM, J.
AND
S.RAMATHILAGAM, J.

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