

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.514 of 2018

Kannamma

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary,
Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai-9.
- 2.The Commissioner of Police,
Commissioner Office,
Salem City, Salem.
- 3.The Inspector of Police,
Annadanapatty Police Station,
Salem, Salem District.

.. 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.3/Goonda/Salem City/2018 dated, 06/02/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Semmattayan Nagaraj @ Samidurai @ Nagaraj, S/o.Perumal, aged 30 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.Thamaraiselvan

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 C.M.P.No.3/Goonda/Salem City/2018 dated 06.02.2018, whereby the detenu, by name, Semmattayan Nagaraj @ Samidurai @ Nagaraj, son of Perumal,

aged about 30 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.530/2015 Annadanapatty Police Station	294(b), 341, 323, 326 and 506(ii) IPC
2.	Cr.No.255/2016 Annadanapatty Police Station	387 and 506(ii) IPC
3.	Cr.No.472/2016 Annadanapatty Police Station	387 and 506(ii) IPC

The ground case has been registered against the detenu in Cr.No.477 of 2017 on the file of Sub-Inspector of Police, Annadanapatty Police Station for offences u/s 392 r/w 397 and 506(ii) IPC. The detention order has been passed by Second respondent in C.M.P.No.3/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.477/2017 on 14.11.2017; whereas the detention order was passed on 06.02.2018, i.e. Nearly after a lapse of 84 days. This inordinate delay in passing of detention order would vitiate the same. Further, 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.477/2017 for the offences u/s. 392 r/w 397 and 506(ii) IPC. Admittedly, the detenu has not moved any bail applications 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.3/Goonda/Salem City/2018 dated 06.02.2018, passed by the second respondent is set aside. The detenu, namely, Semmattayan Nagaraj @ Samidurai @ Nagaraj, son of Perumal, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai-9.
- 2.The Commissioner of Police,
Commissioner Office,
Salem City, Salem.
- 3.The Inspector of Police,
Annadanapatty Police Station,
Salem, Salem District.
- 4.The Public Prosecutor
High Court, Madras.
- 5.The Superintendent
Central Prison, Salem.
- 6.The Joint Secretary,
Public (Law & Order),
Fort Saint George,
Chennai.

H.C.P.No.514 of 2018

rrs 14/09/2018