

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.2163 of 2018

Rani
W/o.Settu

...Petitioner

-Vs-

The State represented by its

1.The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St.George,
Chennai - 600 009.

2.The District Magistrate and District Collector,
Salem
Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records of pertaining to the order of detention dated 07.09.2018 passed by the second respondent in C.M.P.No.29/Goonda/Salem City/2018 and quash the same and produce the detenu, Suresh S/o.Settu, aged about 25 years, detaining at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Manoharan

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

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

Petitioner is the mother of the detenu Suresh S/o.Settu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C.M.P.No.29/Goonda/C2/2018 dated 07.09.2018.

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

Sl.No .	Police Station and Crime No.	Sections of Law
1.	Vazhapadi Police Station Cr.No.36/2018. Dated 17.01.2018	174(3) CrPC (Suspicious death) @ 302 IPC @ 302, 147, 148, 341, 201 IPC

The alleged ground case has been registered against the detenu in Crime No.278 of 2018 on the file of Vazhapadi Police Station for offences under sections 392, 394 IPC @ 392, r/w. 394 IPC. Aggrieved by the order of detention, the present Writ Petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

4. The detaining authority while noticing that the detenu was remanded in the ground case and the bail application moved by the detenu in C.M.P.No.1886/2018 on the file of Judicial Magistrate, Vazhapadi, was dismissed, he had informed that in a similar case bail has been granted by learned Principal Sessions Judge, Salem, in C.M.P.No.3972/2014 dated 03.11.2014 and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. This Court, under orders in H.C.P.No.1520 of 2017 dated 04.12.2017, has held thus:

'5(ii)... The Detaining Authority, according to us, had wrongly entertained an apprehension that the detenu would be released on bail, by adverting to the fact that in similar cases, bail was granted. According to us, this is not have been taken as the basis to come to such a conclusion. In granting bail the Court inter alia takes into account several aspects most of which are case specific. Those would include the gravity of the offence, the ability to suborn witnesses and the likelihood of the accused fleeing from justice. The "similarity case" yardstick applied by the Detaining Authority, based on the provisions of law under which an accused is booked, cannot be a satisfactory indicator for coming to the conclusion that the likelihood of the detenu being enlarged on bail was real and imminent.'

We are in agreement with the above finding. For the said reason, the order under challenge would have to fall.

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Suresh S/o.Settu in C.M.P.No.29/GOONDA/C2/2018 dated 07.09.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gm/rst

To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St.George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Salem,
Salem District.
- 3.The Superintendent of Prison,
Central Prison,
Salem.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2163 of 2018

rrs 24/01/2019

सत्यमेव जयते

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