

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

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

H.C.P. No.2382 of 2018

P.Kumaraswamy

... Petitioner

Vs

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records pertaining to the impugned detention orders vide No.Cr.M.P.No.23/GOONDA/2017 C1 dated 04.12.2017 passed by the second respondent and approved by the first respondent and quash the same as illegal and consequently direct the respondent to produce the detenu P.Kumaraswamy, son of Palani Swamy now confined at Central Prison, Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.Kumaravel

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

ORDER

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

The petitioner is the detenu, namely, Kumarasamy, Son of (Late) Palanisamy, age 55 years, challenges the impugned order of detention, dated 04.12.2017 in Cr.M.P.No.23/Goonda/2017 C1

detaining him 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Salem District Kolathur Police Station Crime No.26/2016	457 & 380 IPC
2.	Erode District Anthiyur Police Station Crime No.251/2017	457 & 380 IPC
3.	Erode District Ammapettai Police Station Crime No.254/2017	457 & 380 IPC

The ground case has been registered against the detenu in Crime No.459/2017 on the file of the Sub-Inspector of Police, Anthiyur Police Station for offences u/s 392 & 506(ii) IPC. The detention order has been passed by second respondent in Cr.M.P.No.23/Goonda/2017 C1 on 04.12.2017.

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.459/2017 for the offences 392 and 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 Cr.M.P.No.23/Goonda/2017 C1 dated 14.12.2017, passed by the second respondent is set aside. The detenu, namely, Kumarasamy, Son of (Late) Palanisamy, aged about 55 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

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

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

3.The Superintendent,
Central Prison, Coimbatore.

4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.P.Kumaravel, Advocate, S.R.No.79297

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GSP(11/12/2018)