

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2072 of 2019

Tamil
S/o.Govindan

... Petitioner/Brother of Detenu

Vs

- 1.The Secretary to the Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat, Chennai - 600009.
- 2.The District Magistrate and District Collector,
Office of the District Collector,
Salem. Respondents/Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records relating to the proceedings of second respondent dated 20.08.2019 vide C.M.P.No.33/Goonda/C2/2019 against the petitioner's brother/detenu viz., Magi @ Meganathan S/o.Govindan, aged 23 years and quash the same and consequently, direct the respondents herein to produce the detenu, who has been now detained under Act 14 of 1982, at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.P.Muthamizh Selvakumar

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

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the brother of the detenu viz., Magi @ Meganathan S/o.Govindan, aged 23 years, 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.33/Goonda/C2/2019 dated 20.08.2019.

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

Sl.No.	Police Station & Crime No.	Section of Law
1.	Karumalaikoodal Police Station, Crime No.34/2017	394 @ 395 IPC
2.	Karumalaikoodal Police Station, Crime No.57/2018	341, 294 (b), 324 and 506(ii) IPC
3.	Nangavalli Police Station, Crime No.76/2018	457 and 380 IPC
4.	Karumalaikoodal Police Station, Crime No.68/2018	147, 148, 342, 332 and 307 IPC

The alleged ground case has been registered against the detenu in Crime No.153 of 2019 on the file of Karumalaikoodal Police Station for offences u/s.392 r/w 397 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 appearing for respondents. Perused the materials on record.

4. Learned counsel for petitioner submits that despite the admitted position that the bail application filed by the detenu in the ground case was dismissed, the detaining authority has informed a real possibility of his coming out on bail by filing a bail application since in a similar case bail was granted by this Court in Crl.O.P.No.25955/2012 in respect of Crime No.246 of 2012 on the file of Salem Town Crime Police Station, for offences u/s.341, 392 r/w 397, 427 and 506(ii) IPC. Learned counsel submits that in the case cited as similar, the offences are different from that of the offences in the ground case. The non-consideration of such aspect reflects non-application of mind.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. As rightly submitted by learned counsel for petitioner, the offences alleged in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, are different from that of the offences alleged in the ground case. Hence, we find that the order of detention suffers from non application of mind.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Magi @ Meganathan S/o.Govindan, in

C.M.P.No.33/Goonda/C2/2019 dated 20.08.2019, 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/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat, Chennai - 600009.
- 2.The District Magistrate and District Collector,
Office of the District Collector,
Salem.
- 3.The Superintendent of Central Prison,
Salem.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.2072 of 2019

BS(CO)
srg 11/02/2020

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