

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

CORAM:

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

H.C.P. No.2224 of 2018

Madhammal

... Petitioner

-Vs-

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

2.The Commissioner of Police,  
Salem City.

3.The Superintendent,  
Central Prison,  
Salem - 7.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of my son Manikandan @ Briyani Mani, aged 29 years, son of Subramani, 147, Riverside North Street, Gugai, Salem, presently detained in Central prison, Salem, under Act 14/1982, as a "Goonda" vide the detention order dated 30.08.2018 in C.M.P.No.58/Goonda/Salem City/2018 on the file of the second respondent herein, directing to produce the person or body of the detenu before this Hon'ble Court and thereafter set him at liberty from the Central Prison, Salem.

For Petitioner : Mr.B.Vasudevan

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

## ORDER

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

The petitioner, who is the son of the detenu, namely, Manikandan @ Briyani Mani, Son of Subramani, aged 29 years, challenges the impugned order of detention, dated 30.08.2018 in C.M.P.No.58/Goonda/Salem City/2018 detaining his father 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 Town Police Station Crime No.324/2015 | 294(b), 323, 324, 427, 307 & 506(ii)                          |
| 2.    | Ammamet Police Station Crime No.439/2018    | 174 Cr.P.C. (Suspicious Death) @ into 147, 364, 302 & 201 IPC |

The ground case has been registered against the detenu in Crime No.413/2018 on the file of the Inspector of Police, Kitchipalayam Police Station for offences u/s. 341, 387 & 506 (ii) IPC. The detention order has been passed by second respondent in C.M.P.No.58/Goonda/Salem City/2018 on 30.08.2018.

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 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.413/2018 for the offences u/s. 341, 387 & 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case in Crime No.413/2018 as also in the 2<sup>nd</sup> adverse case in Crime No.439/2018. 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 detainee 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 C.M.P.No.58/Goonda/Salem City/2018 dated 30.08.2018, passed by the second respondent is set aside. The detenu, namely, Manikandan @ Briyani Mani, Son of Subramani, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Deputy Registrar

//True copy//

Sub Assistant Registrar

kkn

To:

- 1.The Secretary to Government,  
Home, Prohibition & Excise Department,  
Fort St.George,  
Chennai - 600 009.
- 2.The Commissioner of Police,  
Salem City.
- 3.The Superintendent,  
Central Prison,  
Salem - 7.
- 4.The Joint Secretary  
Public (Law and order) Department,  
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor  
High Court, Madras.

H.C.P.No.2224 of 2018

GMV (27/02/2019)