

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.01.2019

CORAM:
THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

H.C.P.No.2559 of 2018

Gunasekaran

... Petitioner

-Vs-

1.The State represented by its Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Salem City,
Salem.

.... Respondents

Petition filed under Article 226 of Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records of pertaining to the order of detention dated 17.10.2018 passed by the second respondent in C.M.P.No.73/Goonda/Salem City/2018 and quash the same and produce the detainee, Satish @ Satish Kumar, aged about 27 years, S/o.Gunasekaran, detained at Central Prison, Salem, before this Honourable Court and set him at liberty and the detainee now has been confined at Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner : Dr.S.Manoharan

For Respondents: Mr.R.Prathap Kumar
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.73/Goonda/Salem City/2018, dated 17.10.2018, whereby the detenu, by name, Sathish @ Sathish Kumar, Son of Gunasekaran, aged about 27 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 case:-

S.No.	Police Station & Crime No.	Sections of Law
1.	Annadanapatty Police Station Crime No.485/2013	302 IPC
2.	Ammapet Police Station Crime No.546 of 2018	Man Missing altered into 387, 364, 302 & 201 IPC

The ground case has been registered against the detenu in Cr.No.377 of 2018 on the file of Sub-Inspector of Police, Veeranam Police Station, for offence u/s 341, 387, 506 (ii) IPC. The detention order has been passed by second respondent in C.M.P. No.73/Goonda/Salem City/2018.

3. We have heard learned counsel for petitioner and the learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

4. 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.

5. Further, the Grounds of Detention would reveal that one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No. 377 of 2018 for offence u/s 341, 387, 506 (ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case as also in the adverse 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 C.M.P. No.73/Goonda/Salem City/2018,

dated 17.10.2018, passed by the second respondent is set aside. The detenu, namely, Sathish @ Sathish Kumar, aged about 27 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

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To:

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

H.C.P.No.2559 of 2018

rrs 11/02/2019

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