

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM:

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

H.C.P. No.2605 of 2018

R.Ettappan @ Praveenraj

... Petitioner

-Vs-

1.The Principal Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat, Chennai - 600 009.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order in No.C.M.P.No.72/Goonda/Salem City/2018/ on 17.10.2018 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner one named Ettappan @ Praveenraj, S/o. Raja, aged about 22 years now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizh Selva Kumar

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 detenu, namely, Ettappan @ Praveenraj, Son of Raja, aged 22 years, challenges the impugned order of detention, dated 17.10.2018 in C.M.P.No.72/Goonda/Salem City/2018 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.	Kannankurichi Police Station Crime No.133/2016	147, 148, 452, 294(b) IPC. 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and Sec. 4 of Tamilnadu Prohibition of Harassment of Woman Act, 2002.
2.	Kannankurichi Police Station Crime No.134/2016	366(A) IPC @ into 366 (A) IPC r/w Sections 7 & 8 of Protection of Children from Sexual Offences Act 2012.

The ground case has been registered against the detenu in Crime No.547/2018 on the file of the Inspector of Police, Kannankurichi Police Station for offences u/s 341, 392 r/w 397 and 506(ii) IPC. The detention order has been passed by second respondent in C.M.P.No.72/Goonda/Salem City/2018 on 17.10.2018.

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.547/2018 for the offences u/s. 341, 392 r/w 397 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 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.72/Goonda/Salem City/2018 dated 17.10.2018, passed by the second respondent is set aside. The detenu, namely, Ettappan @ Praveenraj, Son of Raja, aged about 22 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 Principal Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Salem City.
- 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.2605 of 2018

CSL/14.02.2019