

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM:

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

H.C.P.No.2603 of 2018

Selvi
W/o.Munuswamy

... Petitioner

-Vs-

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

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

3.The Inspector of Police,
Harthampatty Police Station,
Salem.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention dated 28.09.2018 in detention order No.CMP.No.68/GOONDA/SALEM CITY/2018 on the file of the second respondent herein, and quash the same and direct the respondents herein to produce the body of the detenu Bharathiraja, S/o.Kandaraj, Hindu aged about 26 years, who is now confined in Central Prison, Coimbatore before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.Thamarai Selvan.R.
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 aunty of the detenu, namely, Bharathiraja, Son of Kandaraj, age 26 years, challenges the impugned order of detention, dated 28.09.2018 in C.M.P.No.68/Goonda/Salem City/2018 detaining her son-in-law as "GOONDA", as contemplated under Section 2(f) 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 14/1982).

2. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Azhagapuram PS Crime No.148/2018	307 IPC

The ground case has been registered against the detenu in Crime No.331/2018 on the file of the Inspector of Police, Hasthampatty PS, for offences u/s. 302 & 506(ii) IPC. The detention order has been passed by second respondent in C.M.P.No.68/Goonda/Salem City/2018 on 28.09.2018.

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 one adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.331/2018 for the offences u/s.302 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 C.M.P.No.68/Goonda/Salem City/2018 dated 28.09.2018, passed by the second respondent is set aside. The detenu, namely, Bharathiraja, Son of Kandaraaj, aged about 26 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

To

- 1.The Secretary,
Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Commissioners office,
Salem City, Salem.
- 3.The Inspector of Police,
Harthampatty Police Station,
Salem.
4. The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent of Central Prison,
Coimbatore.
- 6.The Superintendent,
District Jail, Attur.

H.C.P.No.2603 of 2018

nr 04/03/2019