

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.2878 of 2018

Sathishkumar

... Petitioner

-Vs-

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

2.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 records in C.M.P.No.78/Goonda/Salem City/2018 dated 22.11.2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the body of the petitioner's cousin brother Boopathy @ Maikkan Boopathy, aged 32 years, son of Madhu, now confined in Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner: Mr.R.Subhadra Devi

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

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ORDER

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

The petitioner, who is the cousin brother of the detenu, namely, Boopathy @ Maikkan Boopathy, Son of Madhu, aged 32 years, challenges the impugned order of detention, dated 22.11.2018 in C.M.P.No.78/Goonda/Salem City/2018 detaining his

brother 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.	Kondalampatty Police Station Crime No.160/2017	392 r/w 397 IPC
2.	Kondalampatty Police Station Crime No.177/2017	341, 387 & 506(ii) IPC
3.	Muthandikuppam Police Station Crime No.122/2018	379 IPC

The ground case has been registered against the detenu in Crime No.420/2018 on the file of the Inspector of Police, Azhagapuram Police Station for offences u/s. 341, 392 r/w 397 & 506(ii) IPC. The detention order has been passed by second respondent in C.M.P.No.78/Goonda/Salem City/2018 on 22.11.2018.

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 3 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.420/2018 for the offences u/s. 341, 392 r/w 397 & 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.78/Goonda/Salem City/2018 dated 22.11.2018, passed by the second respondent is set aside. The detainee, namely, Boopathy @ Maikkan Boopathy, Son of Madhu, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

kkn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Fort St.George,
Chennai - 600 009.
- 2.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.2878 of 2018

KAK(21/02/2019)