

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.NO.2250 OF 2019

Selvam @ Olai Selvam
S/o.Yesu

... Petitioner

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2. Commissioner of Police,
Greater Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in connection with the detention passed by second respondent dated 19.08.2019 in Memo No.502/BCDFGISSSV/2019 against the petitioner Selvam @ Olai Selvam, male, aged 32 years, S/o.Yesu, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Yobu

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

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the detenu viz. Selvam @ Olai Selvam S/o.Yesu, aged 32, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Memo No.502/BCDFGISSSV/2019 dated 19.08.2019.

2. The detenu came to adverse notice in the following cases:

Sl.No	Police Station and Crime No.	Section of Law
1.	T-13 Kundrathur Police Station, Cr.No.714/2019	457 and 380 IPC
2.	T-13 Kundrathur Police Station, Cr.No.754/2019	457 and 380 IPC
3.	T-13 Kundrathur Police Station, Cr.No.908/2019	457 and 380 IPC

The alleged ground case has been registered against the detenu in Crime No.942 of 2019 on the file of T-13 Kundrathur Police Station for offences u/s.341, 294(b), 336, 427, 397 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4. Learned counsel for petitioner submits that despite the admitted position that no bail application has been moved by the detenu, the detaining authority has informed a real possibility of his coming out on bail by filing a bail application since in a similar case bail was granted by learned Principal District and Sessions Judge, Tiruvallur, in Crl.M.P.No.3177 of 2018 in respect of Crime No.369 of 2018 on the file of M-4 Red Hills Police Station for offences u/s.341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. Learned counsel submits that in the case cited as similar, offence u/s.392 IPC was also alleged whereas in the ground case, such offence was not alleged. The non-consideration of such aspect reflects non-application of mind.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. As rightly submitted by learned counsel for petitioner, in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, offence u/s.392 IPC was also alleged whereas in the ground case, such offence was not alleged. Hence, we find that the order of detention suffers from non-application of mind.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Selvam @ Olai Selvam S/o.Yesu, aged 32, in Memo

No.502/BCDFGISSSV/2019 dated 19.08.2019, is set aside. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
2. The Commissioner of Police,
Greater Chennai.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (L & O), Fort St.George,
Chennai-9.

H.C.P.No.2250 of 2019

SJ(CO)
CS/10/03/2020

सत्यमेव जयते

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