

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

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

H.C.P.No.2328 of 2019

Latha

W/o.Venkatachalam

... Petitioner

Vs

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Salem City.

3.The Superintendent,
Central Prison,
Salem - 7.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records leading to the detention of petitioner's son Divagar S/o.Venkatachalam, aged 24 years, back side of Pachayee Kovil, Sunnambukara Street, Shevapet, Salem City, presently detained at Central Prison, Salem, under Act 14/1982, as a "GOONDA" vide detention order dated 05.09.2019 in C.M.P.No.30/Goonda/Salem City/2019 on the file of second respondent herein and quash the same and direction to produce the person or body of the detenu before this Court and thereafter, set him at liberty from Central Prison, Salem.

For Petitioner : Mr.B.Vasudevan
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 mother of the detenu viz. Divagar S/o.Venkatachalam, aged 24, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C.M.P.No.30/Goonda/Salem City/2019 dated 05.09.2019.

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

Sl. No.	Name of the Police Station, Crime No.	Section of law
1.	Annadanapatty PS, Crime No.146/2016	394 IPC
2.	Shevapet PS, Crime No.111/2017	341, 294(b), 323, 324 & 506(ii) IPC
3.	Shevapet PS, Crime No.393/2017	294(b), 324 and 506(ii) IPC
4.	Annadanapatty PS, Crime No.765/2017	364(A), 395 and 397 IPC

The alleged ground case has been registered against the detenu in Crime No.455 of 2019 on the file of Annadanapatty Police Station for offences u/s.341, 392, 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 in the ground case, 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 Sessions Judge, Salem, in C.M.P.No.346 of 2019 in respect of Crime No.693 of 2018 on the file of Kannankurichi Police Station for offences u/s.392 r/w 397 & 506(ii) IPC. Learned counsel submits that in the case cited as similar, the offence u/s.341 IPC was not present whereas in the ground case, such offence has also been 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.341 IPC was not present. 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., Divagar S/o.Venkatachalam, aged 24, in C.M.P.No.30/Goonda/Salem City/2019 dated 05.09.2019, 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)

//True Copy//

Sub Assistant Registrar

gm
To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent,
Central Prison,
Salem - 7.
- 4.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2328 of 2019

A.SK(26/02/2020)

सत्यमेव जयते
WEB COPY