

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

H.C.P.No.2501 of 2019

M.Gowthaman
S/o.Muthusamy

.... Petitioner/Father of the Detenue

Vs

- 1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate & District Collector,
Salem District,
Salem. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records pertaining to the detention order dated 21.08.2019 made in C.M.P.No.37/GOONDA/C2/2019 passed by second respondent and set aside the same and direct respondents herein to produce the detenu viz., Mani @ Mohanraj S/o.Rajendran, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.K.S.Karthik Raja
For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

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O R D E R

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

Petitioner is the friend of the detenu viz., Mani @ Mohanraj S/o.Rajendran, aged 29 years, 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.37/GOONDA/C2/2019 dated 21.08.2019.

2. The detenu came to adverse notice in Crime No.141/2019 on the file of Nangavalli Police Station for offences u/s.307 @ 302 IPC. The alleged ground case has been registered against the detenu in Crime No.144 of 2019 on the file of Nangavalli Police Station for offences u/s.392 r/w 397 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 that the detenu has not filed bail application 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.2886 of 2018 in respect of Crime No.278 of 2018 on the file of Hasthampatty Police Station for offences u/s.392, 397 and 506(ii) IPC. Learned counsel submits that in the case cited as similar, the offence u/s.506(ii) IPC was present whereas in the ground case, such offence has not 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.506(ii) IPC was 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., Mani @ Mohanraj S/o.Rajendran, aged 29 years, in C.M.P.No.37/GOONDA/C2/2019 dated 21.08.2019, 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/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

gm
To

- 1.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.
 - 2.The Joint Secretary
(Public Law & Order) Fort St.George
Chennai-9
 - 3.The District Magistrate & District Collector,
Salem District,
Salem.
 - 4.The Superintendent of Prison,
Central Prison,
Salem.
 - 5.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.K.S.Karthik Raja Advocate sr7838

H.C.P.No.2501 of 2019

pvs (co)
aa10/03/2020

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