

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1299 of 2015

Buvaneshwari
W/o.Muthu

.. Petitioner

vs.

1.The Commissioner of Police,
Tiruppur City,
Tiruppur District.

2.The Principal Secretary to Government
of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

Respondents

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Prayer:- This Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed by the first respondent in C.No.21/G/IS TPR (c)/2015 dated 22.04.2015 under the Tamil Nadu Act 14 of 1982 by setting aside the said order of detention passed by the first respondent and set the detenu, namely, M.Karthy @ Karthick, aged 25 years, S/o.Muthu, at liberty, now detained in Central Prison, Coimbatore.

For Petitioner : Mr.N.Lakshmi Narayanan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by S.TAMILVANAN, J.]

Petitioner is the mother of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the first respondent passed in C.No.21/G/IS TPR (c)/2015 dated 22.04.2015.

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

Sl.No	Police Station and Crime No.	Sections of Law
1.	Tiruppur District, Avinashi Police Station Crime No.365 of 2014	302 IPC
2.	Tiruppur District, Avinashi Police Station Crime No.368 of 2014	393 IPC @ 398 IPC
3.	Tiruppur District, Avinashi Police Station Crime No.158 of 2015	449, 380, 302 IPC @ 120(b), 449, 396 IPC

The alleged ground case has been registered against the detenu on 12.03.2015, by the Anupparpalayam Police Station, in Crime No.260 of 2015 for offences under Sections 147, 148, 341, 294 (b), 387, 307, 427 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the petition, learned counsel appearing for 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.

4. According to learned counsel for petitioner, insofar as the ground case in Crime No.260 of 2015 on the file of Anupparpalayam Police Station is concerned, the detenu has filed bail application before the Principal Sessions Judge, Tiruppur, in C.M.P.No.453/2015 and the said application is pending as on the date of the passing of the detention order. But, the detaining authority has arrived at the subjective satisfaction that it is very likely of the detenu coming out on bail in the ground case as in a similar case viz., Crime No.569 of 2014 on the file of 15-Velampalayam Police Station, Tiruppur, for offences u/s.341, 294 (b), 387, 307, 427 and 506(ii) IPC, bail was granted to the accused in Cr.M.P.No.1614 of 2014 on 27.10.2014. This according to the learned counsel appearing for the petitioner is bereft of particulars without cogent materials, which vitiates the impugned order of detention. Therefore, the detaining authority has arrived at subjective satisfaction that it is very likely of the detenu coming out on bail in the ground case since in the similar case bail is granted and if he comes out on bail he will indulge in such further activities, which are prejudicial to the maintenance of public order. Learned counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case is pending before the Court concerned. When the bail application is pending, there is no presumption that the detenu would come out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in the ground case. The inference has to be drawn from the available material on record. In the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of the detention.

5. Per contra, learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention.

6. We have considered the rival submissions.

7. On a perusal of the detention order, it is clear that the bail application filed by the detenu in the ground case was pending as on the date of passing of the detention order. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail and indulge in such further activities which are prejudicial to the maintenance of public order is only an ipse dixit and that would vitiate the order of detention. When the bail application is pending, then there is no presumption that bail would be granted. Therefore, the impugned order passed suffers from infirmity and the same cannot be sustained in the eye of law. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse case, necessarily would have to be considered by the Court concerned solely on merits uninfluenced by the order of this Court.

Accordingly, the impugned detention order passed by first respondent, detaining the detenu, namely, M.Karthy @ Karthick, made in C.No.21/G/IS TPR (c)/2015 dated 22.04.2015, is quashed and the Habeas Corpus Petition is allowed. 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

True Copy सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Commissioner of Police,
Tiruppur City,
Tiruppur District.

2.The Principal Secretary to Government of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

3.The Superintendent, Central Prison, Coimbatore.

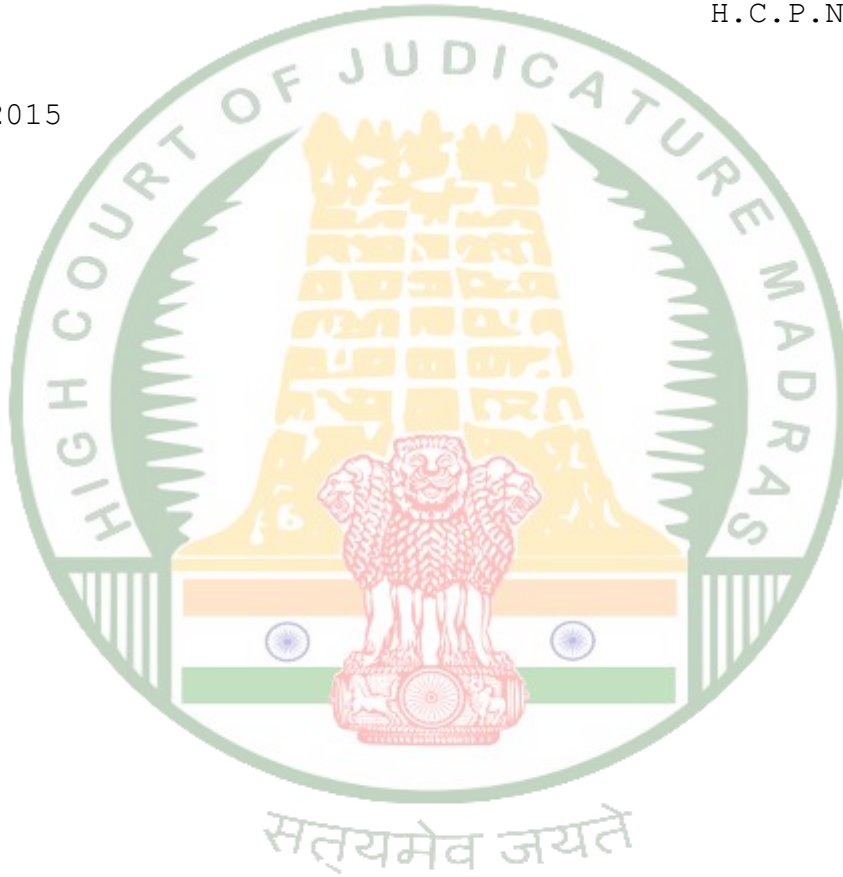
4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George,Chennai-9.

5.The Public Prosecutor,
High Court, Chennai.

1 cc to Mr. N.Lakshmi Narayanan, Advocate Sr.No.44004

H.C.P.No.1299 of 2015

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pmk.22.9.2015



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