

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1639 of 2015

Gracy
W/o.Sekar

.. Petitioner/Mother of the detenu
vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records pertaining to detention order passed by second respondent in BCDFGISSSV No.45 of 2015 dated 20.05.2015 against the petitioner's son, the detenu Mathew, Male, S/o.Sekar, aged 25, quash the same and consequently, direct the respondents to produce the detenu, who is confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 Mathew S/o.Sekar, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in BCDFGISSSV No.45 of 2015 dated 20.05.2015. Such order is under challenge herein.

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

Sl.No .	Crime No. and Police Station	Sections of law
1	Chennai T.P. Chatram Police Station, Crime No.522 of 2014	147, 148, 341, 294 (b), 307, 506(ii) IPC r/w 120(b), 34 IPC
2	Somangalam Police Station, Crime No.150 of 2015	147, 148, 341, 302 IPC

The ground case has been registered against the detenu in Crime No.157 of 2015 on the file of Somangalam Police Station for offences under Sections 294(b), 386, 307, 506(ii) IPC and 3(i) of Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992.

3. Learned counsel for petitioner submitted that the detaining authority has been of the view that there is real possibility of the detenu being released on bail since in a similar case bail has been granted. In support of such reasoning, he has relied on an order of bail in a case where the accused has been released on bail not upon merits of the case but owing to his having become statutorily entitled thereto u/s.167(2) Cr.P.C. Therefore, the case treated as similar by the detaining authority merely is not so. Hence, the order of detention suffers from non-application of mind.

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

5. As could be evidenced from paragraph No.5 of the Grounds of Detention, the detenu's bail application filed in the ground case before learned District Sessions Judge II, Kancheepuram, in C.M.P.No.634 of 2015 was pending as on the date of passing of the detention order. It is also further evidenced from the said paragraph that a reference was made to a similar case in Crime No.727 of 2013 on the file of Kanchi Taluk Police Station for offences u/s.147, 148, 120(b) and 302 IPC, wherein bail was granted to the accused. But a perusal of the Booklet placed before this Court, in particular, page Nos.223 and 225, it is seen that the said accused was granted statutory bail u/s.167(2) Cr.P.C. Therefore, the non-application of mind and erroneous subjective satisfaction arrived at by the detaining authority is apparent. 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.

The detention order passed by second respondent, detaining the detenu Mathew S/o.Sekar, aged about 25 years, made in BCDFGISSSV No.45 of 2015 dated 20.05.2015, 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/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Joint Secretary to Govt.
Public (Law and Order)
Fort St.George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

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