

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.1769 of 2015

Vasantha
W/o.Late Selvakumar @ Selvaraj .. Petitioner

vs.

1. State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Magistrate and District Collector,
The Nilgiris District.
Udhagamandalam. ... 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 Cr.M.P.No.4/Goondas Act/2015 dated 12.05.2015 against the detenu John @ Nagaraj S/o. Selvakumar (Late), aged 25, quash the same and consequently, direct the respondents to produce the detenu, who is confined at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.K.V.Sridharan, Advocate

For Respondents: Mr.M.Maharaja
Additional Public Prosecutor

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O R D E R

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

Petitioner is the mother of the detenu, John @ Nagaraj S/o. Selvakumar (Late), has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in Cr.M.P.No.4/Goondas Act/2015 dated 12.05.2015. Such order is under challenge herein.

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

Sl No.	Name of the Police station and Crime No.	Section of law
1.	B1 Town Central Police Station, Crime No.154 of 2014	457, 380 IPC
2.	B1 Town Central Police Station, Crime No.296 of 2014	457, 380 IPC

The ground case has been registered against the detenu in Crime No.147 of 2015 on the file of B-1 Town Central Police Station for offences under Sections 454 and 380 IPC.

3. Learned counsel for petitioner submitted that the detenu has been in remand in the ground case and the bail application filed by him in the ground case before learned Judicial Magistrate, Udhagamandalam, in C.M.P.No.2086 of 2015 was dismissed and the detenu has filed another bail application before such Court in C.M.P.No.2637 of 2015 and the same was pending as on the date of the passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the said case since in similar cases bail was granted. Learned counsel submitted that admittedly, in this case, the second bail application filed by the detenu in the ground case was pending and he is in remand in the said case. When a bail application is pending, there is no presumption that he would come out on bail. No cogent materials are available before the Detaining Authority to conclude/to apprehend that the detenu is likely to get bail in the ground case and there is no imminent possibility of the detenu coming out on bail in the said case. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail as the second bail application in the ground case is pending is not justifiable for the reason that he has pre-judged the matter. By the reason of pendency of the application, one could not easily come to the conclusion that the Court would certainly grant bail to the accused. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is likelihood of the detenu coming out on bail in the ground case is a mere ipse dixit without any cogent materials.

4. Per contra, the learned Additional Public Prosecutor submitted that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. As evidenced from paragraph No.4 of the grounds of detention, the detenu is in remand in the ground case and the second bail application filed by the detenu in the ground case before learned Judicial Magistrate, Udthagamandalam, in C.M.P.No.2637 of 2015 was pending as on the date of passing of the detention order. When a bail application is pending, then there is no presumption that the detenu would come out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is a likelihood of his coming out on bail in the ground case would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground, the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

The detention order passed by second respondent, detaining the detenu John @ Nagaraj S/o. Selvakumar (Late), aged about 25 years, made in Cr.M.P.No.4/Goondas Act/2015 dated 12.05.2015, 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.

Gm

Sd/-

Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Magistrate and District Collector,
The Nilgiris District.
Udhagamandalam.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison,
Coimbatore.

5. The Joint Secretary to Government
Public (Law and Order) Department,
Fort St.George, Chennai

+1 C.C. To MR.K.V.SRIDHARAN, Advocate in SR.NO.51751

H.C.P.No.1769 of 2015

KU(CO)
sd : 08/10/2015



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