

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2865/2015

Dharmalingam

..... Petitioner/
father of the
detenu

Vs

1.The Government of Tamil Nadu,
rep.by Secretary, Home,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009

2.The Commissioner of Police,
Salem District

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the detention order in C.M.P.No.50/Goonda/Salem City/2015 dated 29.05.2015, on the file of the second respondent and quash the same and produce the petitioner's son Thiru Mariappan S/o.Dharmalingam, aged about 24 years confined at Central Prison, Salem and set him at liberty.

For Petitioner : Mr.Karan and Uday

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.JAICHANDREN,J]

This Habeas Corpus Petition has been filed, by the father of the detenu, namely, Mariappan, aged about 24 years, son of Dharmalingam, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.50/Goonda/Salem City/2015, dated 29.05.2015, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) of

the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body of the detenu and to set him at liberty, forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State and we have also perused the records, carefully.

3. Though, a number of grounds had been raised by the petitioner, while challenging the impugned order of detention, dated 29.05.2015, the learned counsel, appearing on behalf of the petitioner, had pointed out that, instead of furnishing the remand warrant relating to the detenu, in the book-let supplied to him, he had been furnished with the Form of remand warrant, relating to one Karthik, son of Ganesan Asari. It is submitted that the relevant papers, relating to the detenu, had not been placed before the detaining authority, for his arriving at the subjective satisfaction that it is necessary to detain the detenu and to keep him in custody.

4. It is noted from the records available that, instead of furnishing the remand warrant, relating to the detenu, in the book-let supplied to him, he had been furnished with the Form of remand warrant, relating to one Karthik, son of Ganesan Asari. The relevant papers, relating to the detenu, had not been placed before the detaining authority, for his arriving at the subjective satisfaction that it is necessary to detain the detenu. The furnishing of the irrelevant material, which is in the form of remand warrant, would prejudice the detenu, in making an effective representation. In such circumstances, we find that there is non-application of mind on the part of the detaining authority, in passing the detention order. Therefore, we are inclined to set aside the impugned detention order.

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5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 29.05.2015, passed by the second respondent is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msk
To

1. The Secretary to Government
The State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009.
2. The Commissioner of Police,
Salem District
3. The Superintendent of Police, Central Prison
Salem.
4. The Additional Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government
Public Law and Order
Fort St. George Chennai-9

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