

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

CORAM

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

H.C.P.No.2883/2015

Rani

..... Petitioner

Vs

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

2.The Commissioner of Police,
Chennai Police,
Egmore,
Chennai.

... 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 in connection with the order of detention passed by the 2nd respondent, dated 26.10.2015 in BDFGISSV No.1115/2015, against the son of the petitioner Diva @ Divakar, 23, son of Ramesh, who is confined at Central Prison, Puzhal, Chennai, and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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

ORDER

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

This Habeas Corpus Petition is filed, by the brother of the detenu, namely, Diva @ Divakar, aged 23 years, Son of Ramesh, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.1115 of 2015, dated 26.10.2015, 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, Puzhal, Chennai, and to quash the same and to direct the Respondents to produce the body of the detenu and 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 for the State and we have also perused the records carefully.

3. Though, several grounds have been raised in this Habeas Corpus Petition, Mr.K.S.Kaviarasu, the learned counsel appearing on behalf of the petitioner, had assailed the impugned detention order mainly on the ground that the detaining authority had stated, in Paragraph No.4 of the order of detention, that the bail applications moved on behalf of the detenu, in J11 Kannagi Nagar Police Station Crime No.2324 of 2015 and 2340 of 2015, before the Judicial Magistrate, Alandur, Chennai, in CrI.M.P.Nos.6644 of 2015 and 6643 of 2015, were dismissed on 16.10.2015. However, in the detention order it had been stated that the relatives of the detenu are taking action to take him out on bail, in J11 Kannagi Nagar Police Station Crime No.2324 of 2015 and 2340 of 2015, by filing bail applications before the appropriate Courts. It had also been pointed out that no statements had been recorded from the relatives of the detenu with regard to the claim that they are taking steps to move bail applications, on behalf of the detenu and no such statements had been furnished to the detenu.

4. The said submissions made by the learned counsel appearing on behalf of the petitioner, had not been refuted by the learned Additional Public Prosecutor.

5. It is noted from the records available that no statements had been recorded from the relatives concerned to substantiate the claim that they are taking steps to move bail applications on behalf of the detenu, to take him out on bail, in the above said cases. 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 detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 26.10.2015, 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009.
- 2.The Commissioner of Police,
Chennai Police,
Egmore,
Chennai.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Additional Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

सत्यमेव जयते

H.C.P.No.2883/2015

WEB COPY

ak(CO)
srg(27/04/2016)