

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2016

CORAM

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

H.C.P.No.3190/2015

Y.Rameeja Petitioner /Mother of the detenu

Vs

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

2.The Commissioner of Police,
Coimbatore City.

..... 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 relating to the detention order passed by the second respondent in C.No.63/G/IS/2015, dated 27.11.2015, in detaining the detenu under the Tamilnadu Act 14/1982, as a "Goonda" and quash the same and to direct the respondents to produce the detenu, namely, Y.Sheik Ali @ Sheik, S/o.Yasin Babu, aged about 28 years, who is detained at Central Prison, Coimbatore, before this Court and to set him at liberty.

For Petitioner : Mr.J.Franklin

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

ORDER

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

The petitioner, who is the mother of the detenu, has come up with this Habeas Corpus Petition, to call for the records pertaining to the detention order passed by the 2nd respondent in C.No.63/G/IS/ 2015, dated 27.11.2015, against the detenu, namely, Mr.Y.Sheik Ali @ Sheik, S/o.Yasin Babu, aged

28 years, under the Tamilnadu Act 14/1982, branding him as a "Goonda", and to quash the same and to direct the respondents to produce the detenu, who is detained at Central Prison, Coimbatore, before this Court and to set him at liberty.

2. We have heard, Mr.J.Franklin, the learned counsel appearing for the petitioner; Mr.A.N.Thambidurai, the learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that the detenu was remanded to judicial custody in the ground case in Coimbatore City, B-8 Variety Hall Road Police Station Crime No.436 of 2015. In this case, a bail petition has been filed before the Principal District & Sessions Court, Coimbatore, in C.M.P.No.3240 of 2015 and the same was dismissed on 24.11.2015. Thereafter, no bail petition was filed in connection with the case in Crime No.436 of 2015. While so, the detaining authority has stated that, "...it is learnt from the statement of Thiru.R.Ansar, Uncle of the accused Y.Sheik Ali @ Sheik, it is evident that steps are being taken to get bail for the accused by filing another bail petition in the aforesaid case". The conclusion arrived at by the detaining authority by stating that there is real possibility of the detenu coming out on bail by filing another bail petition is based on no materials. This is indicative of the non-application of mind on the part of the detaining authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

4. The learned Additional Public prosecutor would submit that the detaining authority after due and proper appreciation of the cogent and sufficient materials available before him has arrived at the subjective satisfaction and clamped the order of detention and hence, prays for the dismissal of the Habeas Corpus Petition.

5. We have considered the above submissions. Admittedly, the detenu was in remand in connection with the ground case in Coimbatore City, B-8 Variety Hall Road Police Station Crime No.436 of 2015 and he has filed a bail petition before the Principal District & Sessions Court, Coimbatore, in C.M.P.No.3240 of 2015 and the same was dismissed on 24.11.2015. Thereafter, the detenu has not moved any bail petition in Crime No.436 of 2015. While so, the detaining authority has stated that, "...it is learnt from the statement of Thiru.R.Ansar, Uncle of the accused Y.Sheik Ali @ Sheik, it is evident that steps are being taken to get bail for the accused

by filing another bail petition in the aforesaid case". As on the date of passing of the detention order, after the dismissal of the bail petition on 24.11.2015, when the detenu has not at all moved any petition for bail in the case in Cr.No.436 of 2015, it is not known as to how the detaining authority has come to the conclusion that there is a real possibility of the detenu coming out on bail by filing another bail petition. This conclusion arrived at by the detaining authority is based on no materials. This only reflects that the detaining authority has passed the detention order in total non-application of mind, which would vitiate the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 27.11.2015, 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

//True Copy//

Sub Assistant Registrar

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To

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

H.C.P.No.3190/2015

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kra 09.05.2016