

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM

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

H.C.P.No.1092 of 2016

Sharmila Devi

... 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 District Collector and
District Magistrate,
Salem District,
Salem.

... 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 pertaining to the detention order, dated 13.4.2016 in C.M.P.No.11/Goonda/C2/2016, passed by the second respondent and quash the same and to direct the respondents to produce the petitioner's husband, namely, U.Kesavan, son of Ulaganathan, aged about 33 years, who is presently undergoing detention in the Central Prison, Salem, before this Court and set him at liberty, forthwith.

For Petitioner : Mr.N.Anand

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Kesavan, aged about 33 years, son of Ulaganathan, to issue a Writ of Habeas Corpus, to call for the

records, in C.M.P.No.11/Goonda/C2/2016, dated 13.4.2016, passed by the second 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 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 set him at liberty forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner, as well as 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, the learned counsel appearing on behalf of the petitioner has stated that the Detaining Authority had stated, in paragraph No.4 of the Detention Order, that the detenu is in remand in Crime No.31 of 2016, on the file of the Mac. Donald Choultry Police station. He has filed a bail application in C.M.P.No.1080 of 2016, before the learned Principal Sessions Judge, Salem and the same was dismissed, on 17.3.2016. It had been further stated in the order of detention that the detenu had filed a bail application in C.M.P.No.1384 of 2016 and the same had also been dismissed, on 11.4.2016, by the learned Principal Sessions Judge, Salem. The detaining authority had further stated that, in a similar case, registered in Crime No.246 of 2012, on the file of the Salem Town Crime Police Station, bail was granted to the accused concerned and therefore, there is likelihood of the detenu coming out on bail. The learned counsel appearing on behalf of the petitioner had stated that there is no reference, in the order of detention, that any bail application had been filed on behalf of the detenu, thereafter. Hence, there is no real possibility of the detenu coming out on bail, in the near future. Therefore, the conclusion of the detaining authority that there is a possibility of the detenu coming out on bail shows his non application of mind, while passing the detention order.

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 appearing on behalf of the respondents.

5. On verification of the records, it has been found that the detenu Kesavan is in remand in the ground case, in Crime No.31 of 2016, on the file of the Mac Donald Choultry Police Station. The bail application filed by the detenu, in C.M.P.No.1080 of 2016, had been dismissed, by the learned

Principal Sessions Judge, Salem, in C.M.P.No.1080 of 2016, on 17.3.2016. Further, the bail application filed by the detenu, in C.M.P.No.1384 of 2016, had also been dismissed, vide order, dated 11.4.2016. However, there is no reference to the filing of the bail application on behalf of the detenu, thereafter. The detaining authority had stated in the detention order that there is a real possibility of the detenu coming out on bail, in the above said ground case, as bail had been granted to the accused concerned, in a similar case registered, in Crime No.246 of 2012, on the file of the Salem Town Crime Police Station. In such circumstances, it is clear that there is no reference, in the order of detention, about filing of the bail application on behalf of the detenu, thereafter. Therefore, the statement of the detaining authority in the detention order that there is a real possibility of the detenu coming out on bail, shows the non application of mind on the part of the detaining authority. Thus, it is clear that the detention order has been passed by the detaining authority without proper application of mind and appreciation of facts. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 13.4.2016, 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 III)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and
District Magistrate,
Salem District,
Salem.
3. The Superintendent,
Central Prison, Salem.

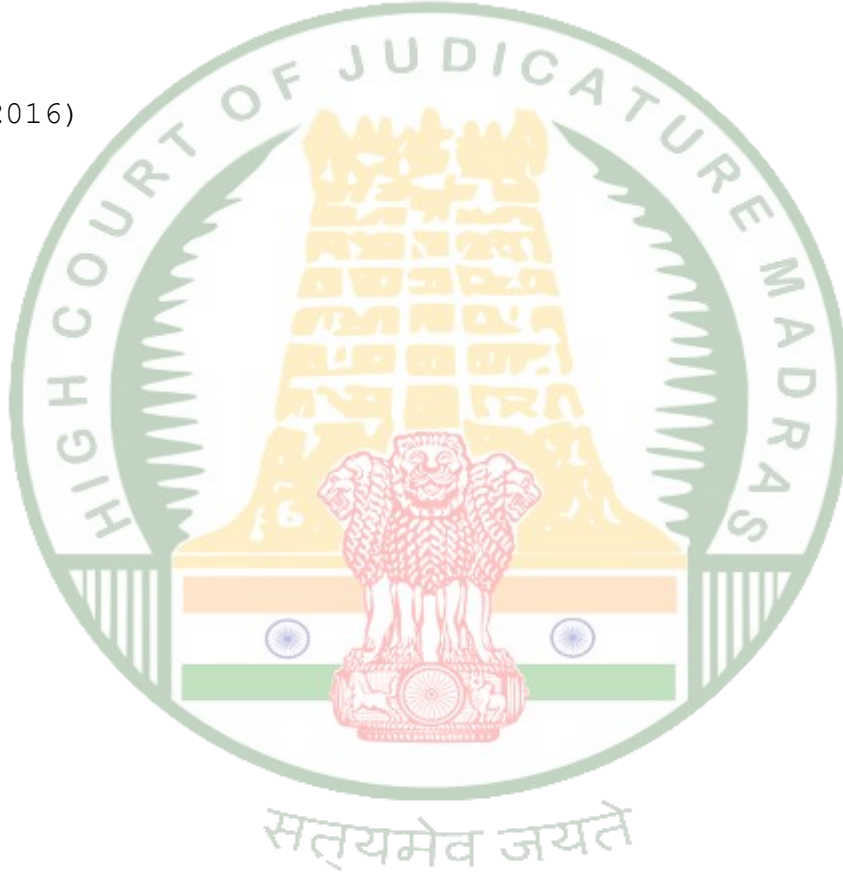
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.67476

H.C.P.No.1092 of 2016

SR(CO)
CA(14/12/2016)



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