

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2016

CORAM

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

H.C.P.No.1102 of 2016

M.Jeya .. 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,
Namakkal District,
Namakkal.

... 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 5.4.2016 in C.M.P.No.09/Goonda/2016/M1, passed by the second respondent and quash the same and to direct the respondents to produce the body of the detenu, by name Siva @ Sivaraj, son of Muthuraj, aged about 24 years, presently confined at the Central Prison, Salem, before this Court and set him at liberty, forthwith.

For Petitioner : Mr.N.Manokaran

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

ORDER

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

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Siva @ Sivaraj, aged about 24 years, son of Muthuraj, to issue a Writ of Habeas Corpus, to call for the

records, in C.M.P.No.09/Goondas/2016/M1, dated 5.4.2016, 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 states that in the ground case registered in Crime No.77 of 2016, on the file of the Tiruchengode Rural Police Station and in the third adverse case registered in Crime No.96 of 2016, on the file of the Tiruchengode Town Police Station, no bail application has been filed by the detenu and that 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 is apparent that no bail application has been filed by the detenu in the ground case, in Crime No.77 of 2016, on the file of the Tiruchengode Rural Police Station, as well as in the third adverse case in Crime No.96 of 2016, on the file of the Tiruchengode Town Police Station. In such circumstances, 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 5.4.2016, 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(J)

//True Copy//

Sub Assistant Registrar

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,
Namakkal District,
Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Salem.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.N.Manokaran, Advocate sr.66437

H.C.P.No.1102 of 2016

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srg 10/12/2016

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