

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM

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

H.C.P.No.1106 of 2016

Palanisamy

.. Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai-600 009.

2.The District Collector and
District Magistrate,
Krishnagiri,
Krishnagiri 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 pertaining to the detention order, dated 2.4.2016 in S.C.No.05/2016, passed by the second respondent and quash the same as illegal and consequently, to direct the respondents to produce the petitioner's son, namely Mohanraj, son of Palanisamy, aged 24 years, who is confined at the Central Prison, Salem, before this Court and set him at liberty, from detention.

For Petitioner : Mr.W.Camyles Gandhi

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 father of the detenu, namely, Mohanraj, son of Palanisamy, aged about 24 years, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.05/2016, dated 2.4.2016, 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 in the grounds of detention, it had been stated that the detenu was remanded in judicial custody, relating to Crime No.119/2016, on the file of Shoolagiri Police Station. He had filed a bail application before the Judicial Magistrate-I, Hosur, in Crl.M.P.No.501 of 2016, which was dismissed, on 5.3.2016. Thereafter, he had filed another bail petition before the District Sessions Court, Krishnagiri, in C.M.P.No.643 of 2016, which had also been dismissed, on 18.3.2016. It had been further stated in the grounds of detention that the co-accused in the said ground case had been granted bail, by the District Principal Sessions Court, Krishnagiri, in Crl.M.P.No.643 of 2016, vide order, dated 18.3.2016 and hence, there is a real possibility of the detenu coming out on bail, on filing the bail application. The learned counsel appearing on behalf of the petitioner had stated that no fresh 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 real 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 clear that already two bail applications had been filed by the detenu, in respect of the ground case and both the bail applications had been dismissed. From the records available, it is seen that no fresh bail application had been filed on behalf of the detenu, in the ground case. 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 2.4.2016, 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/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. 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,
Krishnagiri,
Krishnagiri District.
- 3.The Superintendent, CentralPrison, Salem.
- 4.The Joint Secretary to Govt.,
Public (L&O) fort St.George,Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

mg(co)
krd 19/12

H.C.P.No.1106 of 2016

सत्यमेव जयते

WEB COPY