

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.1116 of 2016

Baby Shalini .. Petitioner / wife of the detenu
Vs

- 1.The State of Tamil Nadu,
rep by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam 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 relating to the detention order passed by the second respondent in C.O.C.No.39/2016, dated 3.5.2016 and to quash the same and to direct the respondents to produce the body or person of the detenu Kamalakannan, son of Thangaiyan, aged about 36 years, now detained in the Central Prison, Cuddalore, before this court and set him at liberty.

For Petitioner : Mr.M.Karunanithi

For Respondents: Mr.V.M.R.Rajentran, APP

ORDER

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

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Kamalakannan, son of Thangaiyan, aged about 36 years, to issue a Writ of Habeas Corpus, to call for the records, in C.O.C.No.39/2016, dated 3.5.2016, 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, Cuddalore, 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 contended that in paragraph No.4 of the order of detention, it has been stated that the wife of the detenu is taking steps to take him out on bail. However, no statements had been recorded from the wife of the detenu or any other relatives of the detenu with regard to the claim that they are taking steps to move a bail application, on behalf of the detenu. The learned counsel appearing for the petitioner has further contended that in the ground case, i.e., in Crime No.183 of 2016, on the file of the Mayiladuthurai Police Station, the bail petition filed by the detenu, in Cr.M.P.No.1709 of 2016, had been dismissed by the learned Judicial Magistrate-I, Mayhiladuthurai, on 22.4.2016 and no fresh bail petition has been filed. Therefore, there is no imminent possibility of the detenu coming out on bail, in the near future. Thus, 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. It is noted from the records available that no statements had been recorded from the wife of the detenu or the relatives of the detenu to substantiate the claim that they are taking steps to move a bail application on behalf of the detenu, to take him out on bail, in Crime No.183 of 2016, on the file of the Mayhiladuthurai Police Station. Further, the bail petition filed by the detenu, in the above said case, had already been dismissed by the learned Judicial Magistrate-I, Mayiladuthurai, by an order, dated 22.4.2016, made in Cr.M.P.No.1709 of 2016 and no fresh bail petition had been filed. Hence, there is no imminent possibility of the detenu coming out on bail. 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 3.5.2016, 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 (CS V)

/true copy/

Sub Asst. Registrar

vvk

To

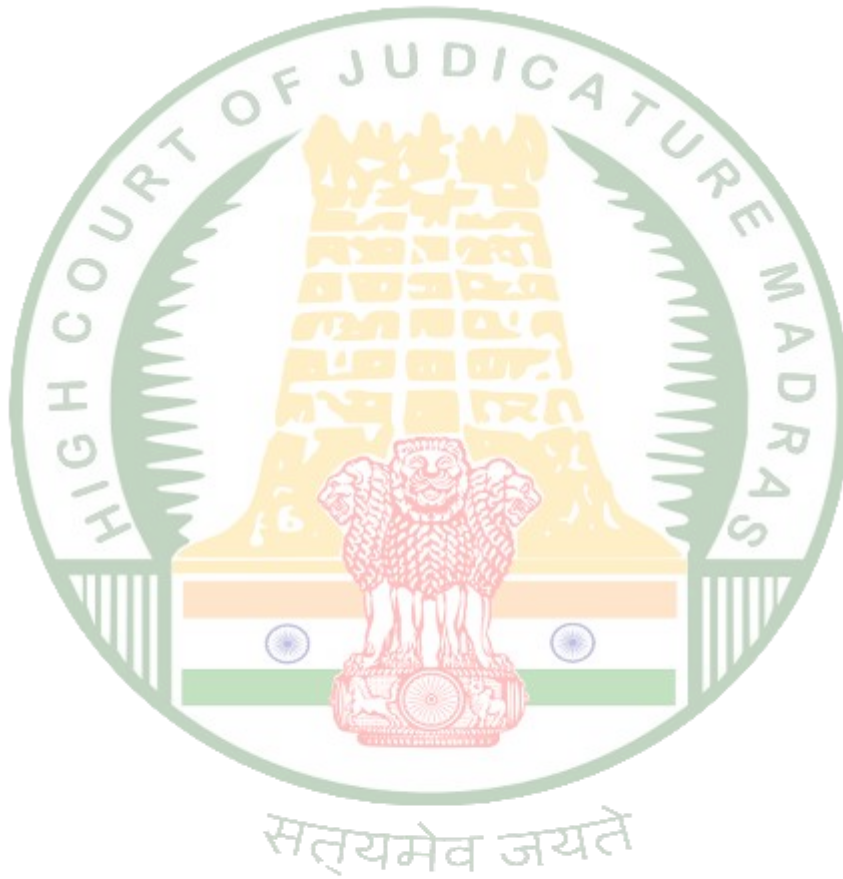
- 1.The Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
4. The Superintendent
Central Prison,
Cuddalore
5. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai

6.The Public Prosecutor,
High Court, Madras.

1 cc t Mr.C. Prabakaran, Advocate, Sr. 67472

H.C.P.No.1116 of 2016

GJ (CO)
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