

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM

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

H.C.P.No.1191 of 2016

S.Rajakala ... Petitioner /Mother of the Detenue

Vs

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

2. The Commissioner of Police/
Detaining Authority,
City Police Officer,
Hazur Road,
Coimbatore City,
Coimbatore-18.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records relating to the petitioner's son detention, vide detention order, dated 30.5.2016, on the file of the second respondent, made in proceedings Memo C.No.20/G/IS/2016, quash the same as illegal and consequently to direct the respondents to produce the petitioner's son S.Kawaskhan, son of Seenibabu, aged 24 years, before this court and to set him at liberty from detention in the Central Prison, Coimbatore.

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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 mother of the detenu, namely, S.Kawaskhan, aged about 24 years, son of Seenibabu, to issue a Writ of Habeas Corpus, to call for the records, in C.No.20/G/IS/2016, dated 30.5.2016, 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, Coimbatore, and to quash the same and to direct the Respondents to produce the body of the detenu and to 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 assailed the impugned detention order mainly on the ground that the detaining authority had stated, in the order of detention, that in a similar case registered at Tirunelveli Taluk Police Station Crime No.69 of 2013, bail was granted to the accused M.Isakkipandi and associates, by the Court of Judicial Magistrate No.III, Tirunelveli, in C.M.P.No.6572 of 2013, on 28.5.2013. In the said case, statutory bail had been granted under Section 167(ii) of the Criminal Procedure Code. Therefore, it cannot be said that in the ground case in Crime No.221 of 2016, on the file of the C-4 Rathinapuri Police Station, there is a real possibility of the detenu coming out on bail. Thus, it is a clear case of non application of mind on the part of the detaining authority in passing the order of detention.

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 the Detaining Authority, while passing the detention order, had mentioned in the detention order that in a similar case registered in Crime No.69 of 2013, on the file of the Tirunelveli Taluk Police Station, bail was granted to the

accused M.Isakkipandi and associates, in C.M.P.No.6572 of 2013, by an order, dated 28.5.2013, by the Judicial Magistrate No.III, Tirunelveli. However, on a perusal of the records available, it had been found that in Crime No.69 of 2013, statutory bail had been granted, under Section 167(ii) of the Criminal Procedure Code. Therefore, it is clear that there is no real possibility of the detenu coming out on bail, in the ground case, in Crime No.221 of 2016. In such circumstances, we find that there is non application of mind on the part of the detaining authority, in passing the detention order. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 30.5.2016, 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/-

Assistant Registrar(CS VII)

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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/
Detaining Authority,
City Police Officer,
Hazur Road,
Coimbatore City,
Coimbatore-18.
3. The Superintendent,
Central Prison,
Coimbatore.

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

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1191 of 2016

pvs[co]
srg 09/01/2017



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