

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

and

THE HON'BLE MR.JUSTICE S.BASKARAN

H.C.P.No.1203 of 2016

Jeevitha .. Petitioner / Wife of the Detenue

Vs

1.State rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.

.. 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 in BCDFGISSSV No.432/2016, passed by the second respondent, on 15.4.2016 and to set aside the same and to direct the respondents to produce Ilaya @ Ilaiyaraja, son of Arockiasamy, aged about 29 years, who is now detained in the Central Prison, Puzhal, Chennai, before this court and to set him at liberty.

For Petitioner : Mr.S.Swamidoss 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 wife of the detenu, namely, Ilaya @ Ilaiyaraja, son of Arockiyasamy, aged about 29 years, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.432/2016, dated 15.4.2016, 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, Puzhal, Chennai, 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. The learned counsel appearing for the petitioner has pointed out that there is total non application of mind on the part of the detaining authority in passing the impugned detention order. According to him, in page No.3 of the typed set, i.e., in inner page No.2 of the order of detention, it is stated that the detenu was arrested in R-6 Kumaran Nagar Police Station Crime No.123 of 2016, but no such case was pending against the detenu. It was also pointed out that in the vernacular version of the detention order, which is found in page No.11 of the typed set, it has been stated that the detenu was detained in R-6 Kumaran Nagar Police Station Crime No.100 of 2016, which is contrary to what is stated in the English version. It has been further pointed out that in the inner page No.5, in paragraph 4 of the detention order, the detaining authority has stated that the detenu has moved bail petition for R-6 Kumaran Nagar Police Station Crime Nos.97 of 2016 and 616 of 2016, whereas in another part of the order, the detaining authority has stated that the detenu is likely to come out on bail, in R-6 Kumaran Nagar Police Station Crime Nos.97/2016, 98/2016 and 100/2016. It has been pointed out by the learned counsel for the petitioner that no such case in Crime Nos.98 of 2016 and 100 of 2016, on the file of R-6 Kumaran Nagar Police Station, is pending against the detenu. Therefore, it clearly shows that the detaining authority has not applied his mind while passing the impugned 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. On verification of the records, it is apparent that there is total non application of mind on the part of the detaining authority in passing the detention order. It is found in page No.3 of the typed set that the detenu was arrested in R-6 Kumaran Nagar Police Station Crime No.123 of 2016, but no such case was pending against the detenu. Further, in the vernacular version of the detention order, which is found in page No.11 of the typed set, it has been stated that the detenu was detained in R-6 Kumaran Nagar Police Station Crime No.100 of 2016, which is contrary to what is stated in the English version. Apart from that, in paragraph No.4 of

the order of detention, the detaining authority had stated that the detenu is likely to come out on bail in R-6 Kumaran Nagar Police Station Crime Nos.97/2016, 98/2016 and 100/2016. However, no such case in Crime Nos.98 of 2016 and 100 of 2016, on the file of R-6 Kumaran Nagar Police Station, is pending against the detenu. Thus, there is total non application of mind on the part of the detaining authority, while 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 15.4.2016, 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.

vvk

Sd/-
Assistant Registrar (CS-)

/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 Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent, Central Prison,
Puzhal, Chennai
- 5.The Joint Secretary to Government,
Public (Law & Order) Fort.St.George,
Secretariat, Chennai-600 009.

H.C.P.No.1203 of 2016

MSM [CO]
MSI 12/01/2017