

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.1233 of 2016

Shanthi .. Petitioner

Vs

1.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,
Dharmapuri District,
Dharmapuri.

... 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 S.C.No.6 of 2016, dated 1.3.2016, on the file of the second respondent herein and quash the same as illegal and to direct the respondents to produce the detenu Maru @ Markandan, aged about 41 years, son of Perumal, now confined at the Central Prison, Salem, before this court and to set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

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 wife of the detenu, namely, Maru @ Markandan, aged about 41 years, son of Perumal, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.06/2016, dated 1.3.2016, 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 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 contended that the detaining authority has stated, in paragraph No.4 of the grounds of detention, that the detenu was produced before the Court of Judicial Magistrate No.II, Dharmapuri, on 20.1.2016, in Adhiyamankottai Police Station Crime No.32/2016 and was remanded in judicial custody and his remand had been extended till 17.2.2016, and further extended up to 2.3.2016. It had been further stated that the detenu had filed a bail petition before the Judicial Magistrate-II, Dharmapuri, in Cr.M.P.No.406 of 2016, which had been dismissed, on 3.2.2016. The detenu had filed another bail petition, before the District Sessions Court, Dharmapuri, in C.M.P.No.467 of 2016, on 29.2.2016 and the same is pending. It had been further stated in the detention order that, in a similar case registered in Papparappatti Police Station Crime No.258 of 2015, bail was granted to the accused Arunkumar, by the District Principal Sessions Court, Dharmapuri, vide CrI.M.P.No.1463/2015, dated 7.8.2015 and hence, there is a likelihood of the detenu coming out on bail, in the ground case, in Crime No.32/2016, on the file of Adhiyamankottai Police Station. The learned counsel appearing on behalf of the petitioner had submitted that the detaining authority has not considered the second adverse case, registered in Crime No.491 of 2015, on the file of Karimangalam Police Station, and that the detenu is in custody, in respect of the said case, from 6.2.2016. Thus, according to the petitioner, the non consideration of the second adverse case, by the detaining authority, shows his lack of 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 the Detaining Authority, while passing the detention order, had considered the ground case, registered in Crime No.32 of 2016, on the file of Adhiyamankottai Police Station. However, on a perusal of the

detention order, it is clear that the second adverse case, in Crime No.491 of 2015, on the file of Karimangalam Police Station, wherein the detenu had been arrested, was not considered by the Detaining Authority, while passing the order of detention. In such circumstances, the non consideration of the second adverse case, by the Detaining Authority, in the order of detention, has caused prejudice to the detenu. This shows the 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 1.3.2016, 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 II)

//True Copy//

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

H.C.P.No.1233 of 2016

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