

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

H.C.P.No.1254 of 2016

Elumalai

... Petitioner

Vs

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2. The District Magistrate,
The District Collector,
Tiruvallur District,
Tiruvallur.

... 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 impugned order of detention passed by the second respondent in BCDFGISSV No.14/2016, dated 10.4.2016 and to set aside the same, consequently, to direct the respondents to produce the detenu Dilli, son of Elumalai, aged about 22 years, who is detained in Central Prison, Puzhal, Chennai, before this Court and to set him at liberty, forthwith.

For Petitioner : Mr.M.V.Deenadayalan

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

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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, Delli, aged about 22 years, son of Elumalai, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSV No.14/2016, dated 10.4.2016, 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. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel appearing on behalf of the petitioner had submitted that the ground case in Crime No.155 of 2016 had been registered by the Tiruttani Police Station, for the offences under Sections 341, 294(b), 392, 397 and 506(ii) of the Indian Penal Code. It had been further stated that in paragraph No.5 of the grounds of detention, the Detaining Authority had stated that in a similar case, in Madhuravoyal Police Station Crime No.735 of 2014, registered for the offences under Sections 341, 294(b), 392, 397 and 506(ii) of the Indian Penal Code, bail had been granted to the accused concerned, in Crl.M.P.No.2357 of 2014, by the learned Principal District and Sessions Judge, Tiruvallur, vide order, dated 24.6.2014. However, on perusal of the copy of the bail order furnished to the detenu, in the form of booklet, in page No.284, it is seen that the case in Crime No.735 of 2014, on the file of Maduravoyal Police Station, had been registered for the commission of offences, under Sections 341, 294(b), 336, 427, 392, 397, 307 and 506(ii) Indian Penal Code. Thus, in the similar case relied upon, by the Detaining Authority, for passing the Detention Order, the provisions are not similar to the ground case against the detenu. Therefore, there is 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. Considering the submissions made by the learned counsels appearing for parties concerned and on a perusal of the records available, it is found that the detaining authority had relied on a similar case in Crime No.735 of 2014, on the file of the Maduravoyal Police Station, wherein bail had been granted to the accused concerned. The said case had been registered for the offences under Sections 341, 294(b), 336, 427, 392, 397, 307 and

506(ii) Indian Penal Code. But, in the impugned detention order, it had been stated that the ground case in Crime No.155 of 2016, on the file of Tiruttani Police Station, had been registered for the offences under Sections 341, 294(b), 392, 397 and 506(ii) of the Indian Penal Code. Therefore, the similar case relied on by the detaining authority is not similar to the ground case. 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 10.04.2016, 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 IV)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The District Magistrate,
The District Collector,
Tiruvallur District,
Tiruvallur.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
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.1254 of 2016

UG(CO)
CA(06/01/2017)