

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2016

CORAM

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

H.C.P.No.1270 of 2016

Arif .. Petitioner / brother

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 Commissioner of Police,
Greater Chennai,
Chennai.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records, relating to the proceedings of the second respondent herein in BCDFGISSSV No.553 of 2016, dated 7.6.2016 and to quash the same and to produce the detenu Afsal, aged about 26 years, son of Masthan, TPDA No.8068, now detained in the Central Prison, Puzhal, before this Court and to set him at liberty.

For Petitioner : Mr.K.Kamaleshkumar

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

ORDER

[Order of the Court was made by M.JAICHANDREN,J]

This Habeas Corpus Petition has been filed by the brother of the detenu, namely, Afsal, aged about 26 years, son of Masthan, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.553/2016, dated 7.6.2016, 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, has assailed the impugned detention order mainly on the ground that the detaining authority had stated, in paragraph No.4 of the order of detention, that the detenu Afsal is in remand, in J-7 Velachery Police Station Crime Nos.785/2016 and 786/2016, and that he had not moved any bail application, in Crime Nos.785/2016 and 786/2016, so far. However, the detaining authority had stated in the order of detention that the relatives of the detenu are taking steps to take him out on bail, in J-7 Velachery Police Station Crime Nos.785/2016 and 786/2016, by filing bail applications before the appropriate Court. It had also been pointed out that no statements had been recorded from the relatives of the detenu with regard to the claim that they are taking steps to move bail applications, on behalf of the detenu, in the above said cases and no such statements had been furnished to the detenu.

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 relatives concerned to substantiate the claim that they are taking steps to move bail applications on behalf of the detenu, to take him out on bail, in Crime Nos.785/2016 and 786/2016, on the file of J-7 Velachery Police Station, which are the adverse case and ground case, respectively. 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 7.6.2016, 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 II)

/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 Commissioner of Police,
Greater Chennai,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.
4. The Superintendent
Central Prison, Puzhal,
Chennai
5. The Joint Secretary
Public (Law and order) Fort Saint George,
Chennai-9

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