

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.1274 of 2016

Razia Begum

.. Petitioner

Vs

1.The Commissioner of Police,
Chennai City, Vepery,
Chennai-600 007.

2.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records of the first respondent, in Memo No.BCDFGISSSV No.532/2016, dated 2.6.2016, and setting aside the order of detention passed therein against the detenu Nijamudeen @ Nijam, aged about 30 years, son of Kalesha and setting him at liberty from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Hussaini Basha

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 mother of the detenu, namely, Nijamudeen @ Nijam, aged about 30 years, son of Kalesha, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.532/2016, dated 02.06.2016, passed by the first 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 Nijamudeen @ Nijam is in remand in S-5 Pallavaram Police Station Crime Nos.2574/2015, 1220/2016 and 1226/2016 and he had moved a bail application for S-5 Pallavaram Police Station Crime No.1226 of 2016, before the Court of Principal District and Sessions Judge, Chengalpattu, in Crl.M.P.No.1285 of 2016, which had been dismissed. The detenu had again moved a bail application, before this Court, in Crl.O.P.No.11263 of 2016, relating to Crime No.1226 of 2016, which had also been dismissed. The detenu had moved bail applications in Crime Nos.2574 of 2015 and 1220 of 2016 before the Court of Judicial Magistrate, Tambaram, in Crl.M.P.Nos.3427 of 2016 and 4029 of 2016, which were dismissed. It had been further stated in the order of detention that the relatives of the detenu are taking steps to take him out on bail, in S-5 Pallavaram Police Station Crime Nos.2574 of 2015, 1220 of 2016 and 1226 of 2016, by filing another 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 in Crime Nos.2574 of 2015 and 1220 of 2016, on behalf of the detenu 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.2574 of 2015 and 1220 of 2016, on the file of S-5 Pallavaram Police Station. 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 02.06.2016, passed by the first 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

/TRUE COPY/

SUB ASST. REGISTRAR

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,
Chennai City, Vepery,
Chennai-600 007.
- 3.The Superintendent,
central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Govt.,
Public (Law & Order),
Fort St. George,
Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.1274 of 2016

MMP 03.01.2017
CO (UG)

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