

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.1278 of 2016

S.Sankar

.. Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
 2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai-600 007.
- .. 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 relating to the order of detention passed by the second respondent in No.560/BCDFGISSSV/2016, dated 8.6.2016, against the detenu S.Sankar, who is detained in the Central Prison, Puzhal, and to set aside the same and to direct the respondents to produce the detenu before this court and to set him at liberty.

For Petitioner : Mr.K.Murugan

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

ORDER

This Habeas Corpus Petition has been filed by the detenu, namely, Sankar, aged about 22 years, son of Chellathurai, to issue a Writ of Habeas Corpus, to call for the records, in No.560/BCDFGISSSV/2016, dated 8.6.2016, 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 had submitted that in the grounds of detention, in paragraph 4, the Detaining Authority had stated that he is aware that the detenu Sankar is in remand in K-10 Koyambedu Police Station Crime No.490 of 2016 and he had moved a bail application, before the Court of Principal Sessions Judge, Chennai, in Crl.M.P.No.7239 of 2016 and the same is pending. However, it had been pointed out by the learned counsel appearing on behalf of the petitioner that the bail application, filed on behalf of the detenu, in Crl.M.P.No.7239 of 2016, had already been dismissed, by the Court of Principal Sessions Judge, Chennai, on 2.6.2016 itself, whereas the impugned order of detention had been passed, by the Detaining Authority, on 8.6.2016. Thus, it is found that the detaining authority had not considered the relevant records, pertaining to the detenu, while passing the order of detention. It had also been pointed out that no bail application had been filed on behalf of the detenu, in both the adverse cases, namely, Crime No.931 of 2016, on the file of J-7 Velachery Police Station and Crime No.383 of 2016, on the file of K-11 C.M.B.T. Police Station, even though he had been kept in custody in the said cases. Thus, 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 stated in the impugned order of detention that the detenu had moved a bail application, in K-10 Koyambedu Police Station Crime No.490 of 2016, before the Court of Principal Sessions Judge, Chennai, in Crl.M.P.No.7239 of 2016 and the same is pending. However, it is found from the records available that the bail application, filed on behalf of the detenu, in Crl.M.P.No.7239 of 2016, had already been dismissed, by the Court of Principal

Sessions Judge, Chennai, on 2.6.2016. Thus, it is clear that the detaining authority had not considered the relevant records, pertaining to the detenu, while passing the order of detention and there is no real possibility of the detenu coming out on bail, in the ground case, in Crime No.490 of 2016. Further, no bail application had been filed on behalf of the detenu, in both the adverse cases, namely, Crime No.931 of 2016, on the file of J-7 Velachery Police Station and Crime No.383 of 2016, on the file of K-11 C.M.B.T. Police Station, even though the detenu had been kept in custody. Thus, it is clear that the detaining authority has not applied its mind, properly, while passing the impugned detention order, dated 8.6.2016. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 8.6.2016, 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.

s/d-
Assistant Registrar(CCC)

//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 Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai-600 007.
 3. The Public Prosecutor,
High Court, Madras.
 4. The Joint Secretary to Govt
Public(Law & order), Fort.st.George, chennai-9
 5. The Superintendent, Central Prison, Puzhal, Chennai
- +1 CC to Mr.K.Murugan, Advocate sr 73446

H.C.P.No.1278 of 2016

LRS (CO)
sp/30/1