

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

and

THE HON'BLE MR.JUSTICE T.MATHIVANAN

H.C.P.No.1303 of 2016

Carmesh

..Petitioner/Mother of Detenue

Vs

1.The State of Tamil Nadu,
rep by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
The Commissioner Office,
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 in connection with the order of detention passed by the second respondent in his proceedings Memo BCDFGISSSV No.534/2016, dated 2.6.2016, and to set aside the same and to direct the respondents to produce the petitioner's son Sajith, son of Kovilraj, aged about 23 years, the detenu, now confined in the Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.M.Jaishankar

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, Sajith, aged about 23 years, son of Kovilraj, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.534/2016, dated 02.06.2016, 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 Sajith is in remand in S-11 Tambaram Police Station Crime Nos.1319/2016 and 1625/2016 and that the detenu had filed a bail petition, in respect of Crime No.1625/2016, before the Court of Principal District and Sessions Judge, Chengalpattu, in Crl.M.P.No.1470 of 2016, which is pending. The detenu had not moved any bail petition, in Crime No.1319 of 2016, so far. 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-11 Tambaram Police Station Crime No.1319 of 2016, by filing a bail application 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 a bail application, 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 a bail application on behalf of the detenu, to take him out on bail, in the third adverse case, in Crime No.1319 of 2016, on the file of S-11 Tambaram 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 2.6.2016, 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

/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,
The Commissioner Office,
Vepery, Chennai-600 007.
- 3.The Superintendent, Central Prison,
Puzhal, Chennai
- 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.1303 of 2016

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ss(25/01/2017)

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