

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.1314 of 2016

M.Sathya ... Petitioner

Vs

- 1.The State represented by its
The Secretary to Government ,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 2.The District Magistrate and District Collector,
Namakkal District,
Namakkal. 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 pertaining to the order, dated 3.6.2016, passed by the second respondent, in C.M.P.No.16/Goonda/2016/M1 and to quash the same and to produce the petitioner's son detenu Sabari @ Sabarinathan, aged about 25 years, son of Murugan, who is confined at the Central Prison, Salem, before this court and to set him at liberty.

For Petitioner : Mr.N.Manokaran

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

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, Sabari @ Sabarinathan, aged about 25 years, son of Murugan, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.16/Goonda/2016/M1, dated 3.6.2016,

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, Salem, 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 paragraph 4 of the grounds of detention, it had been stated that the detenu Sabari @ Sabarinathan had been remanded, as per the order of the Judicial Magistrate No.1, Namakkal and was lodged in the Central Prison, Salem, in the Namakkal Police Station Crime No.265/2016. It had been further stated that the detenu had filed a bail application, in C.M.P.No.3046 of 2016, before the Judicial Magistrate No.1, Namakkal, which had been dismissed, on 20.5.2016. It had been further stated in the order of detention that, as the bail had been granted to the accused concerned, in a similar case registered, in Tiruchengode Rural Police Station Crime No.191/2015, there is a real possibility of the detenu coming out on bail, in this case also. The learned counsel appearing on behalf of the petitioner had submitted that no further bail application had been filed, on behalf of the detenu, in respect of Crime No.265/2016 and that there is no real possibility of the detenu coming out on bail, in the near future. Therefore, the conclusion of the detaining authority that there is a possibility of the detenu coming out on bail shows his non application of mind, while passing the detention order.

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. On verification of the records, it is clear that the bail application, filed by the detenu, in Crime No.265 of 2016, on the file of Namakkal Police Station, had been dismissed, by the Judicial Magistrate No.1, Namakkal, vide order, dated 20.5.2016, made in C.M.P.No.3046 of 2016. Thereafter, no further bail application had been filed by the detenu in the ground case, in Crime No.265 of 2016, on the file of Namakkal Police

Station. In such circumstances, the statement of the detaining authority in the detention order that there is a real possibility of the detenu coming out on bail, shows the non application of mind on the part of the detaining authority. Thus, it is clear that the detention order has been passed by the detaining authority without proper application of mind and appreciation of facts. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 3.6.2016, 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/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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 and District Collector,
Namakkal District,
Namakkal.
3. The Superintendent,
Central Prison,
Salem.
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.1314 of 2016

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