

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM

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

H.C.P.No.1318 of 2016

Jayashree .. Petitioner / wife of the detenu

Vs

1.The State of Tamil nadu,
rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and
District Magistrate,
Erode District,
Erode.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records relating to the petitioner's husband detention, vide detention order, dated 14.1.2016, on the file of the second respondent, made in proceedings Cr.M.P.No.01/Bootlegger/2016 C1 and to quash the same as illegal and consequently, to direct the respondents to produce the petitioner's husband Vasudevan, son of Sankaran, aged 48 years, before this court and to set him at liberty, from detention at Central Prison, Coimbatore.

For Petitioner : Mr.C.C.Chellappan

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 wife of the detenu, namely, Vasudevan, aged about 48 years, son of Sankaran, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.01/Bootlegger/2016 C1, dated 14.1.2016,

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 "Bootlegger", in the Central Prison, Coimbatore, 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, the detaining authority had stated that the detenu Vasudevan is in remand in Gobichettipalayam Prohibition Enforcement Wing Crime No.861/2015 and he had been lodged in the District Prison, Gobichettipalayam. It had been further stated by the detaining authority that he is aware that the detenu had moved a bail application, before the Judicial Magistrate No.3, Erode, in Cr.M.P.No.3 of 2016, which had been dismissed, on 11.1.2016. Thereafter, the detaining authority had stated that there is a real possibility of the detenu coming out on bail, by filing another bail petition, before the concerned court. However, there are no materials available to show that another bail application is being moved, on behalf of the detenu, either by his relatives or by any other person. Thus, 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 real 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 seen that the bail application filed by the detenu, before the Judicial Magistrate-III, Erode, in respect of Crime No.861 of 2015, on the file of Gobichettipalayam Prohibition Enforcement Wing, had been dismissed, on 11.1.2016, vide order made in CrI.M.P.No.3 of 2016. Further, the detaining authority had stated in the order of detention that there is real possibility of the detenu coming out on bail, by filing another bail application. However, no material had been produced to show that further bail application

is being moved, on behalf of the detenu, either by his relatives or by any other person, to take him out on bail. 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 14.1.2016, 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,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Erode District,
Erode.
- 3.The Public Prosecutor,
High Court, Madras.
4. The Superintendent
Central Prison,
Coimbatore
5. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai

H.C.P.No.1318 of 2016

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