

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.1321 of 2016

Sasikala

...Petitioner

Vs

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

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

....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 order of the second respondent made in No.C3/D.O./8/2016, dated 15.6.2016, against the detenu, namely, David @ Davidraj, son of Murugan, aged about 24 years, who is confined at the Central Prison, Cuddalore and to set aside the same and consequently, to direct the respondents herein to produce the body and person of the detenu, before this court and to set him at liberty, forthwith.

For Petitioner : Mr.K.Balu

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, David @ Davidraj, aged about 24 years, son of Murugan, to issue a Writ of Habeas Corpus, to call for the records, in C3/D.O./8/2016, dated 15.6.2016, 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, Cuddalore, 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 David @ Davidraj had been remanded to judicial custody and lodged in the Central Prison, Cuddalore, in connection with Reddichavadi Police Station Crime No.107/2016 and he had not filed any bail application, so far. Further, the detaining authority had stated that there is likelihood of the detenu coming out on bail, in the said Crime No.107/2016, by filing a bail application, before the concerned court. However, there are no materials available to show that a 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 likelihood 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 detenu had been remanded in judicial custody and lodged in the Central Prison, Cuddalore, in respect of Crime No.107/2016, on the file of Reddichavadi Police Station and that he had not moved any bail application, so far. Further, the detaining authority had stated in the order of detention that there is likelihood of the detenu coming out on bail, by filing a bail application. However, no material had been produced to show that any 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 Crime No.107/2016, on the file of Reddichavadi Police Station. In such circumstances, the statement of the detaining authority in the detention order that there is likelihood 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 15.6.2016, 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

//True Copy//

Sub Assistant 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,
Cuddalore District,
Cuddalore.

3. The Superintendent,
Central Prison,
Cuddalore.
4. The Joint Secretary to Government Public
(Law & Order)
Fort Saint George,
Chennai-9
5. The Public Prosecutor,
High Court, Madras.

ACA(CO)
RS(31/01/2017)

H.C.P.No.1321 of 2016



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