

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2016

CORAM

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

H.C.P.No.1327 of 2016

S.Ashok ... Petitioner /Father of the Detenue

Vs

- 1.The Principal Secretary to
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai Police,
Office of Commissioner of Police,
Vepery, Chennai-600 007.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai-600 066. ... 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 of the second respondent, in Memo No.508/BCDFGISSSV/2016, dated 27.5.2016 and to set aside the same and to set the detenu Gunaseelan, aged about 24 years, son of Ashok, now confined in the Central Prison, Puzhal, Chennai, at liberty.

For Petitioner : Mr.N.Kannan

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 father of the detenu, namely, Gunaseelan, aged about 24 years, son of

Ashok, to issue a Writ of Habeas Corpus, to call for the records, in No.508/BCDFGISSSV/2016, dated 27.5.2016, 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, the detaining authority had stated that the detenu, Gunaseelan, is in remand in K-3 Aminjikarai Police Station Crime Nos.213/2016 and 216/2016, which are the second adverse case and the ground case, respectively. It had been stated that Crime No.213/2016 had been registered, for the offences, under Sections 302 I.P.C. @ 147, 148, 302 I.P.C. read with Section 120 (b) and 34 I.P.C. and Crime No.216 of 2016 had been registered, for the offences, under Sections 147, 148, 341, 294(b), 397, 336, 427 and 506(ii) I.P.C. In the grounds of detention, it had been further stated that in a similar case registered, in K-4 Anna Nagar Police Station Crime No.628 of 2015, for the offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) I.P.C., bail had been granted by the Court of Principal Sessions, Chennai, in CrI.M.P.No.16805 of 2015. According to the learned counsel appearing on behalf of the petitioner, in the similar case, the provision of Section 302 I.P.C. was not found, whereas in the second adverse case, Section 302 I.P.C. was available. Thus, the case, relied on by the detaining authority, in Crime No.628 of 2015, is not similar to the second adverse case. Therefore, there is non application of mind on the part of the detaining authority, in passing the impugned detention order.

4. The said submission 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 relied on a similar case in Crime No.628 of 2015, on the file of

K-4 Anna Nagar Police Station, for the offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) I.P.C., wherein bail had been granted to the accused concerned. But, in the impugned detention order, the second adverse case, in Crime No.213/2016, on the file of K-3 Aminjikarai Police Station, had been registered, for the offences under Section 302 I.P.C. @ Sections 147, 148, 302 I.P.C. read with Section 120(b) and 34 I.P.C. Therefore, the similar case relied on by the detaining authority is not similar to the second adverse case. 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 27.5.2016, 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(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Office of Commissioner of Police,
Vepery, Chennai-600 007.

3.The Superintendent of Prison,
Central Prison, (In duplicate for Communication to Detenu)
Puzhal, Chennai-600 066.

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.1327 of 2016

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