

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.1362 of 2016

Poomayil

...Petitioner

Vs

1. The State of Tamil Nadu,
rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
 2. The Commissioner of Police,
Office of the Commissioner of Police,
(Goondas Section),
Egmore, Chennai-600 008.
- ...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 from the second respondent, in connection with the order Memo BCDFGISSSV No.182/2016, dated 23.2.2016, and quash the same and to produce the petitioner's son Manikandan, aged about 24 years, son of Mathi, now detained in the Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.P.K.Ilavarasan

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, Manikandan, aged about 24 years, son of Mathi, to issue a Writ of Habeas Corpus, to call for the

records, in No.182/BCDFGISSSV/2016, dated 23.2.2016, 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 Manikandan is in remand in M2 Madhavaram Milk Colony Police Station Crime No.103 of 2016 and M1 Madhavaram Police Station Crime No.165/2016. The detenu had moved a bail application, for M-1 Madhavaram Police Station Crime No.165/2016, before the Principal District and Sessions Court, Tiruvallur, in CrI.M.P.No.543 of 2016, which is pending. It had been further stated that the detenu had not moved any bail application, for M2 Madhavaram Milk Colony Police Station Crime No.103 of 2016. However, it had been stated in the grounds of detention that the relatives of the detenu are taking steps to take him out on bail, in M2 Madhavaram milk Colony Police Station Crime No.103/2016, 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 any 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 Crime No.103 of 2016, on the file of M2 Madhavaram Milk Colony 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 23.2.2016, 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,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
(Goondas Section),
Egmore, Chennai-600 008.
3. The Superintendent central prison,
Puzhal, Chennai.
4. The Joint Secretary to Govt. Public (Law & Order)
Fort Saint George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

LRS (CO)
RS (01/02/2017)

H.C.P.No.1362 of 2016