

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2016

CORAM

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

H.C.P.No.1379 of 2016

Porkodi

...Petitioner

Vs

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

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

...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 in connection with the order of detention passed by the 2nd respondent dated 29.06.2016 in C3/D.O.No.33 of 2016 against the husband of the petitioner, detenu Suresh @ Arcot Suresh, Aged 38 years, S/o.Venkatesan, who is confined at Central Prison, Vellore and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.Senthilvel
for Mr.K.S.K.Kaviarasu

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

ORDER

[Order of the Court was made by T.MATHIVANAN, J.]

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Suresh @ Arcot Suresh, son of Venkatesan, aged about 38 years, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.07/Goondas/2016/M1, dated 5.4.2016, 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, Vellore, and to quash the same and to direct the Respondents to produce the body of the detenu and 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 states that in the impugned order of detention it has been stated that the detenu Suresh @ Arcot Suresh had been arrested, on 02.04.2016, and had been remanded to custody, in Crime No.14 of 2016, on the file of the Virinchipuram Police Station. However, in the grounds of detention, the detaining authority had not stated anything about the steps taken on behalf of the detenu to come out on bail by filing a bail application in the said case. Therefore, the finding of the detaining authority that there was an imminent possibility of the detenu coming out on bail is without any materials on record, which shows the non application of mind on the part of the detaining authority, 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 apparent that no bail application has been filed by the detenu in the third adverse case, in Crime No.14 of 2016, on the file of the Virinchipuram. 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 29.06.2016, 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

gpa

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat
Chennai-600 009.
2. The District Collector and
District Magistrate,
Vellore District,
Vellore
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Govt. Public (Law & Order)
Fort St. George
5. The Public Prosecutor,
High Court, Madras.

ALC(CO)
RS(27/01/2017)

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