

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.1411 of 2016

Chitra

...Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Chennai.

....Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records in connection with the order of detention passed by the second respondent, dated 30.6.2016, in BCDFGISSSV No.629/2016, against the son of the petitioner, detenu Raj @ Kullaraj, aged about 24 years, son of Mohan, confined in the Central Prison, Puzhal, Chennai and to set aside the same and consequently, to direct the respondents to produce the detenu before this court and to set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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, Raj @ Kullaraj, aged about 24 years, son of Mohan, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.629/2016, dated 30.6.2016, 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, 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, Raj @ Kullaraj, is in remand, in R-1 Mambalam Police Station Crime Nos.653/2016, 656/2016 and R-2 Kodambakkam Police Station Crime No.446/2016, which are the third adverse case, ground case and the second adverse case, respectively. The detenu had moved a bail application, for R-1 Mambalam Police Station Crime No.656/2016, before the Court of Principal Sessions Judge, Chennai, in CrI.M.P.No.8590/2016, which had been dismissed. The detenu had also moved a bail application, in respect of third adverse case, in Crime No.653 of 2016, before the XVII Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.2459 of 2016, which is pending. It had been stated in the order of detention that the detenu had not moved any bail application, for R-2 Kodambakkam Police Station Crime No.446 of 2016, so far. The detaining authority had stated in the order of detention that the relatives of the detenu are taking steps to take him out on bail, in R-1 Mambalam Police Station Crime No.656 of 2016, by filing another bail application and by filing a fresh bail application, for R-2 Kodambakkam Police Station Crime No.446/2016, before the appropriate court. However, it had been pointed out by the learned counsel appearing on behalf of the petitioner that no statements had been recorded from the relatives of the detenu with regard to the claim that they are taking steps to move a bail application, on behalf of the detenu, in the ground case, in Crime No.656 of 2016, as well as in the second adverse case, in Crime No.446 of 2016 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 another bail application on behalf of the detenu, to take him out on bail, in R-1 Mambalam Police Station Crime No.656 of 2016 and a fresh bail application, in R-2 Kodambakkam Police Station Crime No.446 of 2016. 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 30.6.2016, 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,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent Central Prison,
Puzhal,
Chennai.
5. The Joint Secretary to Government,
Fort St. George
Chennai-9

SVI (CO)
RS (20/01/2017)

H.C.P.No.1411 of 2016