

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.1422 of 2016

T.Govindammal

.. Petitioner

Vs

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

2. The District Collector and
District Magistrate,
Vellore District,
Vellore-632 009.

.. 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 relating to the detention order passed by the second respondent, made in C3/D.O.No.36/2016, dated 30.6.2016 and to quash the same and to direct the respondents to produce the detenu Thulasi, son of Kuppusamy, aged about 36 years, confined in the Central Prison, Vellore, before this Court and to set him at liberty.

For Petitioner : Mr.I.Nagarajan

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

ORDER

This Habeas Corpus Petition has been filed by the wife of the detenu, Thulasi, aged about 36 years, son of Kuppusamy, to issue a Writ of Habeas Corpus, to call for the records, in C3.D.O.No.36/2016, 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 "Bootlegger", in the Central Prison, Vellore, 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 contended that the detenu, Thulasi, is in remand, in Tirupattur Prohibition Enforcement Wing Crime No.167 of 2016 and the bail application filed by him, before the Court of District Sessions, Vellore, in CrI.M.P.No.2285 of 2016, is pending. The learned counsel appearing on behalf of the petitioner had submitted that, in respect of the second adverse case, in Crime No.155/2016, on the file of Tirupattur Prohibition Enforcement Wing, it had been stated in the grounds of detention that the detenu had been arrested, on 31.5.2016. However, the detaining authority had not stated anything about the pendency of the bail application, relating to the said case. Thus, the second adverse case had not been considered by the detaining authority. According to the learned counsel appearing on behalf of the petitioner, the non consideration of the second adverse case, by the detaining authority, shows his lack of 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. It is noted from the records available that the Detaining Authority, while passing the detention order, had considered the ground case registered in Crime No.167 of 2016, on the file of Tirupattur Prohibition Enforcement Wing. However, on a perusal of the detention order, it is clear that the second adverse case, in Crime No.155 of 2016, on the file of the same police station, wherein the detenu had been arrested, was not considered by the Detaining Authority, while passing the order of detention, and nothing about the said case had been stated by the detaining authority. In such circumstances, the non consideration of the second adverse case by the Detaining Authority in the order of detention, has caused prejudice to the detenu. This shows the non application of mind on the part of the detaining authority, while 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.

s/d-
Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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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,
Vellore District,
Vellore-632 009.
3. The Public Prosecutor,
High Court, Madras.
4. The Joint Secretary to Government
Public (Law & Order)
Government of Tamil Nadu.
Fort.St. George
Chennai-9.

H.C.P.No.1422 of 2016

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