

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.1423 of 2016

T.Pothiraj ... Petitioner

Vs

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

2.The Commissioner of Police,
Detaining Authority,
Tiruppur City.

.... 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 second respondent, dated 8.6.2016, in C.No.10/G/IS TRP (C)/2016, against the detenu, T.Pothiraj, son of Thayalan, aged about 28 years, who is confined in the Central Prison, Coimbatore and to set aside the same and to direct the respondents to produce the detenu before this Court and to set him at liberty.

For Petitioner : Mr.V.Paarthiban

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 detenu, namely, T.Pothiraj, aged about 28 years, son of Thayalan, to issue a Writ of Habeas Corpus, to call for the records, in C.No.10/G/IS TPR (C)/2016, dated 8.6.2016, 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, Coimbatore, 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 the order of detention, that in a similar case registered, in Tiruppur City 15-Velampalayam Police Station Crime No.569/2014, bail had been granted to the accused concerned, by the Judicial Magistrate-I, Tiruppur, in Cr.M.P.No.1662 of 2014, on 30.12.2014. In the said case, statutory bail had been granted under Section 167(ii) of the Criminal Procedure Code. Therefore, it cannot be said that in the ground case in Crime No.457 of 2016, on the file of Tiruppur City North Police Station, there is a real possibility of the detenu coming out on bail. Thus, it is a clear case of non application of mind on the part of the detaining authority in passing the order of detention.

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 mentioned in the detention order that in a similar case registered in Crime No.569 of 2014, on the file of Tiruppur City 15-Velampalayam Police Station, the accused concerned was released on bail, in CrI.M.P.No.1662 of 2014, by an order, dated 30.12.2014, by the Judicial Magistrate No.1, Tiruppur. However, on a perusal of the records available, it had been found that in Crime No.569 of 2014, statutory bail had been granted, under Section 167(ii) of the Criminal Procedure Code. Therefore, it is clear that there is no real possibility of the detenu coming out

on bail, in the ground case, in Crime No.457 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 8.6.2016, 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(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Detaining Authority,
Tiruppur City.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.1423 of 2016

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