

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.1431 of 2016

S.Gomathi

.. Petitioner

Vs

- 1.The Government of Tamil Nadu,
rep by its Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police,
Chennai.

.. 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 detention order Memo No.588/BCDFGISSSV/2016, dated 23.6.2016, on the file of the second respondent and to quash the same and to direct the respondents to produce the body of the detenu Sathish @ Sathishkumar, aged about 42 years, now confined in the Central Prison, Puzhal, before this Court and to set him at liberty.

For Petitioner : Mr.R.Vijayakumar
For Respondents : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.JAICHANDREN,J.]

This Habeas Corpus Petition has been filed, by the wife of the detenu, namely, Sathish @ Sathishkumar, aged about 42 years, son of Natesapillai, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in No.588/BCDFGISSSV/2016, dated 23.6.2016, passed by the second respondent, detaining the detenu under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, 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 and the learned Additional Public Prosecutor appearing on behalf of the State and we have also perused the records, carefully.

3. Though, several grounds had been raised by the petitioner, while challenging the impugned order of detention, dated 23.6.2016, the learned counsel, appearing on behalf of the petitioner, had submitted that, in paragraph No.4 of the grounds of detention, the detaining authority had stated that the detenu, Sathish @ Sathishkumar, is in remand, in G-1 Vepery Police Station Crime No.433/2016 and that he had moved a bail application, before the Principal Sessions Court, Chennai, in CrI.M.P.No.6770 of 2016, relating to the said Crime No.433/2016, which had been dismissed, on 4.6.2016. It had been further stated in the order of detention that the relatives of the detenu are taking steps to take him out on bail, by filing bail application, in Crime No.433 of 2016, before the appropriate court. The detaining authority had further stated in the grounds of detention that in a case registered, in F-1 Chindadripet Police Station Crime No.809 of 2014, bail had been granted, by the Principal Sessions Court, Chennai, in CrI.M.P.No.17395 of 2014, and therefore, there is a likelihood of the detenu coming out on bail, in Crime No.433/2016. The learned counsel appearing on behalf of the petitioner had submitted that in the booklet furnished to the detenu, the copy of the first page of the bail order in a similar case, in F-1 Chindadripet Police Station Crime No.809 of 2014, relied on by the detaining authority, had not been furnished, to the detenu and only the second page of the bail order copy had been furnished to the detenu. Thus, the non furnishing of the copy of the first page of the bail order prevented the detenu from making an effective representation against the impugned order of detention. 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 bail application, on behalf of the detenu, in the above said crime No.433 of 2016 and no such statements had been furnished to the detenu. Thus, the detention order is vitiated and the same is liable to be quashed.

4. The said submission 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. Considering the submissions made by the learned counsels appearing on behalf of the parties concerned, it is found 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.433 of 2016, on the file of G-1 Vepery Police Station. Thus, it is clear that there is non application of mind on the part of the detaining authority, in passing the detention order. Further, the detaining authority had relied on the similar case registered, in Crime No.809 of 2014, on the file of F-1 Chindadripet Police Station, wherein bail had been granted to the accused concerned, by the Principal Sessions Court, Chennai, in Crl.M.P.No.17395 of 2014. But, the copy of the first page of the bail order, relating to the said case, had not been furnished to the detenu and that the second page of the bail order alone had been furnished to the detenu. As such, we find that the non furnishing of the copy of the first page of the bail order would prejudice the detenu, in making an effective representation against the impugned order of detention, dated 23.6.2016. Therefore, we are inclined to set aside the impugned detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 23.6.2016, 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//

सत्यमेव जयते
Sub Assistant Registrar

vvk

To

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

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3.The Public Prosecutor,
High Court, Madras.

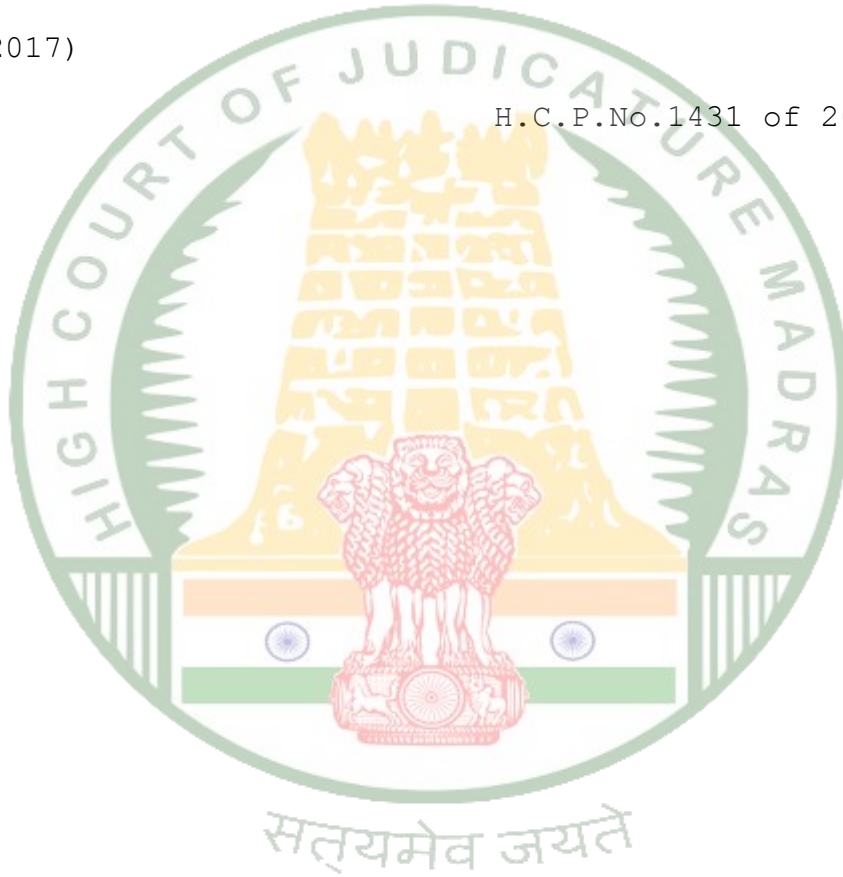
4 The Superintendent Central Prison, Puzhal, Chennai

5 The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai 9

+2cc to Mr.N. Raja Senthoo Pandian, Advocate, S.R.No.76181

kj (CO)
md(20/01/2017)

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