

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.1434 of 2016

Ruku Petitioner /Mother of the detenue

Vs

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

2.The Commissioner of Police,
Greater Chennai,
Commissioner Office,
Vepery, Chennai-600 007.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records of the detention order Memo No.141/BCDFGISSSV/2016, dated 18.2.2016 passed by the second respondent and to quash the same and to produce the petitioner's son Saravanan, aged about 31 years, confined in the Central Prison, Puzhal, before this court and to set him at liberty.

For Petitioner : Mr.P.Balamurugan

For Respondents: Mr.V.M.R.Rajentran, APP

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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, Saravanan, aged about 31 years, son of Ganesan, to issue a Writ of Habeas Corpus, to call for the records, in memo No.141/BCDFGISSSV/2016, dated 18.2.2016, 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 "Slum Grabber", 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, Saravanan, is in remand in Central Crime Branch Crime Nos.146/2015 and 147/2015 and he had moved bail applications, before the Special Judge for Land Grabbing Cases, Tiruvallur, for the said cases, in Crl.M.P.Nos.9/2016 and 10/2016, respectively, which are pending. It had been further stated in the order of detention that in a similar case, registered in the Central Crime Branch II Crime No.352/2012, bail had been granted to the accused concerned, by the XI Metropolitan Magistrate Court, Saidapet, in Crl.M.P.No.3901 of 2012, and hence, there is a likelihood of the detenu coming out on bail in the above said two cases. The learned counsel appearing on behalf of the petitioner had submitted that in the similar case, referred to by the detaining authority, in Crime No.352 of 2012, bail had been granted, since the prosecution had not sought time, for police custody, for further investigation and enquiry. However, in the ground case, in Crime No.147 of 2015, the Central Crime Branch police had sought police custody and that the learned Magistrate concerned had granted extension of custody. Hence, there is 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, in the similar case, relied on by the detaining authority, in Crime No.352/2012, on the file of the Central Crime Branch II, bail had been granted by the XI Metropolitan Magistrate Court, Saidapet, in Crl.M.P.No.3901 of 2012, since the prosecution had

not sought time, for the police custody, for further investigation and enquiry. But, in the ground case, in Crime No.147 of 2015, on the file of the Central Crime Branch, the police custody had been sought and the learned Magistrate concerned had granted extension of custody. Therefore, it is clear that the detaining authority had not applied his mind while relying on the similar case. 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 18.2.2016, 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(CO)

//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,
Commissioner Office, सत्यमेव जयते
Vepery, Chennai-600 007.
- 3.The Superintendent,
Central Prison, WEB COPY
Puzhal, Chennai.(In duplicate for communication to Detenue)
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1434 of 2016

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