

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.1435 of 2016

Rani

.. Petitioner

Vs

1.The Secretary to the 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 29.6.2016, in BCDFGISSSV No.617/2016, against the son of the petitioner, detenu Diwakar, aged about 27 years, son of Ponnurangam, detained at 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.J.P.Karthikeyan

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

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ORDER

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Divakar, aged about 27 years, son of Ponnurangam, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.617 /2016, dated 29.6.2016, 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, Divakar, is in remand, in J-11 Kannaki Nagar Police Station Crime Nos.452/2016, 453/2016, 454/2016 and 459/2016. He had moved bail applications, for Crime Nos.452/2016, 454/2016 and 459/2016, which are the first and the third adverse cases and a ground case, before the District Principal Sessions Court, Chengalpattu, in Crl.M.P.Nos.1291/2016, 1293/2016 and 1294/2016, respectively, which were dismissed, on 4.6.2016. Thereafter, the detenu had again moved bail applications, for the Crime Nos.452/2016, 454/2016 and 459/2016, before the District Principal Sessions Court, Chengalpattu, in Crl.M.P.Nos.1565/2016, 1566/2016 and 1567/2016, respectively, which are pending. It had been further stated that the detenu had not moved any bail application, in respect of the second adverse case, in Crime No.453 of 2016, so far. It had been further stated in the order of detention that the relatives of the detenu are taking action to take him out on bail, in Crime No.453/2016, by filing a bail application, 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 second adverse case, in Crime No.453/2016 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 a bail application on behalf of the detenu, to take him out on bail, in J-11 Kannaki Nagar Police Station Crime No.453/2016, which is

the second adverse 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 29.6.2016, 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-III)

//True Copy//

Sub-Assistant Registrar

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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 Superiendent , Central Prison, Puzhal, chennai
5. The Joint Secretary to Gocernment, Public (Law and order)
Fort. St. George
chennai-9

H.C.P.No.1435 of 2016

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