

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.1439 of 2016

Dhanalakshmi

... Petitioner/wife of
the detenu

Vs

1. State,
rep by the Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2. The Commissioner of Police,
Salem City,
Salem.

... 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 C.M.P.No.44/Goonda/Salem city/2016, passed by the second respondent, on 27.6.2016 and to set aside the same and to direct the respondents to produce the detenu, Sathish @ Sathishkumar, son of Ponnusamy, aged about 38 years, detained in the Central Prison, Salem, before this court and to set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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

ORDER

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Sathish @ Sathishkumar, aged about 38 years, son of Ponnusamy, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.44/Goonda/Salem city/2016,

dated 27.6.2016, 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, Salem, 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.5 of the order of detention, that the detenu, Sathish @ Sathishkumar, is in remand, in Annadanapatty Police Station Crime Nos.172/2016, 256/2016 and 265/2016, which are the first and the second adverse cases and a ground case, respectively. It had been stated in the order of detention that the bail petitions filed on behalf of him, in Crime Nos.172/2016 and 265/2016, had been dismissed, by the Judicial Magistrate No.4, Salem, on 24.6.2016, in C.M.P.Nos.2032 of 2016 and 2031 of 2016, respectively. It had been further stated in the order of detention that a relative of the detenu is, again, taking steps to take him out on bail, by filing bail applications, for the above said cases, 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 bail applications, on behalf of the detenu, in the above said cases, in Crime Nos.172 of 2016 and 265 of 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, again, taking steps to move bail applications on behalf of the detenu, to take him out on bail, in Annadanapatty Police Station Crime Nos.172 of 2016 and 265 of 2016, which are the first adverse case and the ground case, respectively. 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 27.6.2016, 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,
Salem City,
Salem.
3. The Public Prosecutor,
High Court, Madras.
4. The Superiendent , central prison, salem
5. The Joint Secretary to Government,
Public (Law & order) Fort. ST. George
chennai-9.

सत्यमेव जयते

H.C.P.No.1439 of 2016

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