

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.1440 of 2016

Barathan ... Petitioner /
Father of the Detenue
Vs

- 1.The State of Tamilnadu,
rep by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Commissioner of Police,
Coimbatore City,
Office of the Commissioner of Police,
Coimbatore. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records leading to the detention of the petitioner's son, who has been detained in the Central Prison, Coimbatore, by the second respondent, vide Memo C.No.07/G/IS/2016, dated 5.3.2016 and to quash the same, as illegal and consequently, to direct the respondents to produce the body of the detenu, B.Raja @ Maharajan, aged about 36 years, son of Barathan, before this court and to set him at liberty.

For Petitioner : Mr.R.Kishore Kumar

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 father of the detenu, namely, B.Raja @ Maharajan, aged about 36 years, son of Barathan, praying that this Court may be pleased to

issue a Writ of Habeas Corpus, to call for the records, in C.No.07/G/IS/2016, dated 5.3.2016, 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, 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 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 5.3.2016, the learned counsel, appearing on behalf of the petitioner, had submitted that, in paragraph No.7 of the grounds of detention, the detaining authority had stated that the detenu, B.Raja @ Maharajan, had been remanded in judicial custody, in E-2 Peelamedu Police Station Crime No.34/2016, and that he had not moved any application, so far. It had been further stated in the grounds of detention that steps are being taken to file a bail application, in the said case. Further, in a similar case, registered in Vadapagam Police Station Crime No.296/2010, bail had been granted to the accused concerned, by the Principal District Sessions Court, Thoothukudi, in CrI.M.P.No.758/2011, on 1.4.2011 and therefore, there is a real possibility of the detenu coming out on bail, in the ground case. However, the bail order copy, relating to the said Crime No.296/2010, had not been furnished to the detenu. Hence, the detenu had been prevented from making an effective representation against the impugned order of detention. 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 the detaining authority had relied on the similar case registered, in Crime No.296/2010, on the file of Vadapagam

Police Station, wherein bail had been granted to the accused concerned, by the Principal District Sessions Court, Thoothukudi, in Crl.M.P.No.758 of 2011, on 1.4.2011. But, the copy of the bail order, relating to the said case, had not been furnished to the detenu. As such, we find that the non furnishing of the copy of the bail order would prejudice the detenu, in making an effective representation against the impugned order of detention, dated 5.3.2016. 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 5.3.2016, 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//

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,
Coimbatore City,
Office of the Commissioner of Police,
Coimbatore.
3. The Superintendent, सतयमेव जयते
Central Prison, Coimbatore
(Induplicate for Communication to Detenue)
4. The Joint Secretary to Government Public (Law & Order)
Fort St, George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

NM(CO)
RS(19/01/2017)

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