

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.1472 of 2016

T.Baby ... Petitioner

Vs

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

2.The District Collector and
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

... 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 D.O.No.22/2016/C2, passed by the second respondent, on 6.7.2016, set aside the same and to direct the respondents to produce the detenu, Tamilselvan, son of Palani, aged about 27 years, detained in the Central Prison, Vellore, before this Court and to set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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

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, Tamilselvan, aged about 27 years, son of Palani, to issue a Writ of Habeas Corpus, to call for the records, in D.O.No.22/2016-C2, dated 6.7.2016, 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 "Bootlegger", in the Central Prison, Vellore, 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, Tamilselvan, had been remanded in the Central Prison, Vellore, in the ground case, in Polur Prohibition Enforcement Wing Crime No.432/2016. The detenu had moved a bail application, before the District Sessions Court, Tiruvannamalai, in Cr.M.P.No.3132/2016, which is pending. It had been further stated that the detenu had been granted bail, in the three adverse cases, namely Santhavasal Police Station crime No.83 of 2015 and Polur Prohibition Enforcement Wing Crime Nos.432/2015 and 222/2016. The copies of the bail orders, granted in the above three adverse cases, have been furnished to the detenu, in page Nos.64, 68 and 72 of the booklet supplied to him. It had been further stated in the grounds of detention that in a similar case, registered in Tiruvannamalai Prohibition Enforcement Wing Crime No.376/2015, bail had been granted to the accused concerned, by the District Sessions Court, Tiruvannamalai, in Crl.M.P.No.2206 of 2015, vide order, dated 3.7.2015. The copy of the said bail order had been furnished, in page No.98 of the booklet supplied to the detenu. Therefore, it had been stated that there is a likelihood of the detenu, coming out on bail, in the ground case. The learned counsel appearing on behalf of the petitioner had submitted that in those cases, bail had been granted on the ground that the prosecution had no serious objection, as the investigation had almost been over and that, those cases were not considered on merits. Therefore, the said cases cannot be relied on by the detaining authority to state that there is a likelihood of the detenu coming out on bail, in the ground case. Thus, 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 the detaining authority had stated in the grounds of detention that in the three adverse cases and in the similar case, bail had been granted to the detenu and the accused concerned, and therefore, there is a likelihood of the detenu coming out on bail. The copies of the bail orders had been furnished to the detenu, in page Nos.64, 68, 72 and 98 of the booklet supplied to him. A perusal of the copies of the bail orders would show that bail had been granted to the detenu, since the prosecution had no serious objection to the grant of bail, as the investigation had almost been over. Likewise, in the similar case also, bail had been granted to the accused concerned. Thus, it is clear that the cases relied on by the detaining authority were not considered on merits. Therefore, it cannot be said that in the ground case, there is a likelihood of the detenu coming out on bail. 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 6.7.2016, 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(CCC)

//True Copy//

Sub Assistant Registrar

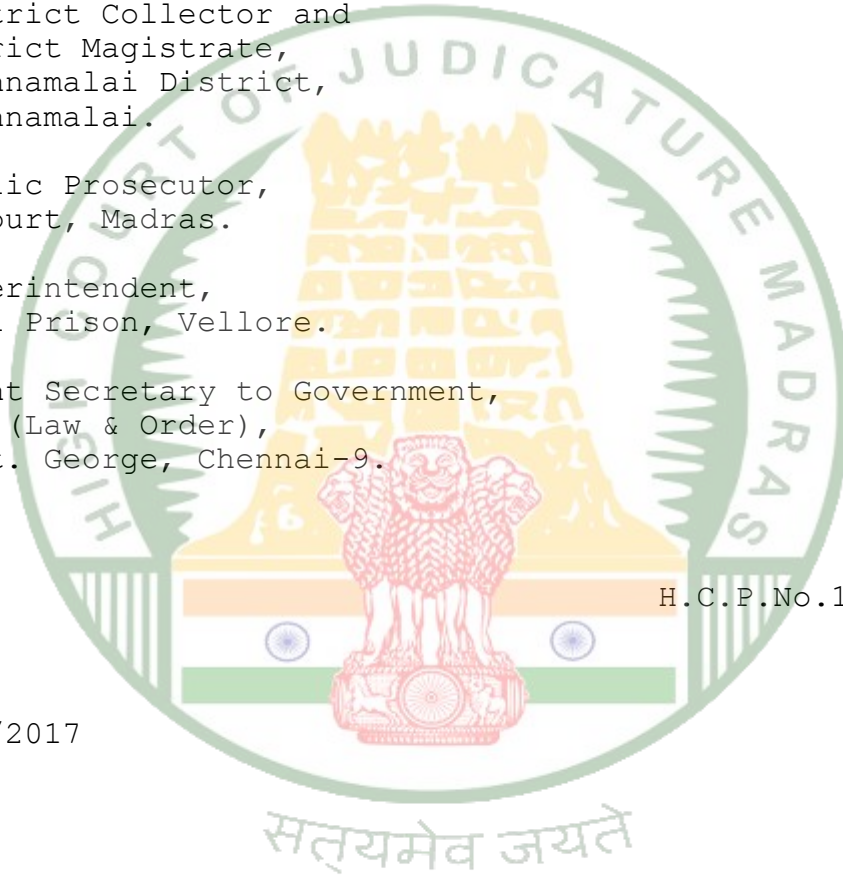
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To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.

H.C.P.No.1472 of 2016

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