

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.1486 of 2016

Alex .. Petitioner/Detenu
Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Vellore District,
Vellore-9. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in connection with the order of detention, passed by the second respondent, dated 29.6.2016, in C3.D.O.No.34/2016, against the petitioner Alex, aged about 26 years, son of John, who is confined in the Central Prison, Vellore and to set aside the same and to direct the respondents to produce the detenu, before this Court and to set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.JAICHANDREN, J.]

This Habeas Corpus Petition has been filed by the detenu, namely, Alex, aged about 26 yeas, son of John, to issue a Writ of Habeas Corpus, to call for the records, in C3.D.O.No.34/2016, 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, 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 contended that in paragraph No.5 of the grounds of detention, the detaining authority had stated that detenu, Alex, had been produced before the learned Judicial Magistrate, Katpadi, on 14.5.2016, in the adverse cases, namely, Thiruvallam Police Station Crime Nos.533/2015 and 158/2016, Virudhambur Police Station Crime No.161/2016 and Katpadi Police Station Crime Nos.129/2016 and 237/2016, and in the ground case, in Katpadi Police Station Crime No.205/2016 and the detenu had been remanded in judicial custody. It had been further stated in the order of detention that the detenu had moved a bail application, in the ground case, in Crime No.205 of 2016, before the Principal Sessions Court, Vellore, in CrI.M.P.No.2563 of 2016, which is pending. The learned counsel appearing on behalf of the petitioner had further submitted that even though the detenu had been arrested in respect of the first and the second adverse cases, namely, Thiruvallam Police Station Crime No.533 of 2015 and Katpadi Police Station Crime No.129 of 2016, nothing had been mentioned about the filing of the bail applications in those cases. The detaining authority had not considered the first and the second adverse cases, while passing the order of detention. According to the petitioner, the non consideration of the said adverse cases, by the detaining authority, shows his lack of application of mind, while passing the detention order.

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, while passing the detention order, had considered the ground case registered in Crime No.205 of 2016, on the file of Katpadi Police Station. However, on a perusal of the detention order, it is clear that the first adverse case, in Crime No.533 of 2015, on the file of Thiruvallam Police Station and the second adverse case, in Crime No.129 of 2016, on the

file of Katpadi Police Station, wherein the detenu had been arrested, were not considered by the Detaining Authority, while passing the order of detention. The detaining authority had not mentioned anything about the filing of the bail applications in those adverse cases. In such circumstances, the non consideration of the first and the second adverse cases by the Detaining Authority in the order of detention, has caused prejudice to the detenu. This shows the non application of mind on the part of the detaining authority, while 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.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vvk

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Vellore District,
Vellore-9.
- 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.1486 of 2016

msm(co)
ss(20/01/2017)