

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.1487 of 2016

Mohan @ Kadai Mohan ... 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 18.1.2016, in C3.D.O.No.03/2016, against the petitioner Mohan @ Kadai Mohan, aged about 28 years, son of Sekar, 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

This Habeas Corpus Petition has been filed by the detenu, namely, Mohan @ Kadai Mohan, aged about 28 years, son of Sekar, to issue a Writ of Habeas Corpus, to call for the records, in C3.D.O.No.03/2016, dated 18.1.2016, 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 this detenu, Mohan @ Kadai Mohan, had been produced before the learned Judicial Magistrate, Katpadi, on 23.12.2015, in the adverse cases, namely, K.V.Kuppam Police Station Crime Nos.362/2015 and 416/2015 and in the ground case, in K.V.Kuppam Police Station Crime No.425/2015 and 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.425 of 2015, before the Principal Sessions Court, Vellore, in CrI.M.P.No.235 of 2016, which is pending. The learned counsel appearing on behalf of the petitioner had further submitted that the detaining authority had not considered anything about the fourth adverse case, in Gudiyatham Town Police Station Crime No.30 of 2015, in the grounds of detention, while passing the order of detention. According to the petitioner, the non consideration of the said adverse case, 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.425 of 2015, on the file of K.V.Kuppam Police Station. However, on a perusal of the detention order, it is clear that the fourth adverse case, in Crime No.30 of 2015, on the file of Gudiyatham Town Police Station, was 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 application in the said adverse case. In such circumstances, the non consideration of the fourth adverse case 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 18.1.2016, 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)

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Sub-Assistant Registrar

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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 Superiendent, Central prison, vellore
5. The Joint Secretary to Government  
Public (Law & order)  
Fort. St. George, chennai-9.

H.C.P.No.1487 of 2016

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