

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

H.C.P.No.1900 of 2016

N.Pasunkili .. Petitioner /Mother of the Detenue

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai-600 009.

2.The District Magistrate and District Collector,
Namakkal District,
Office of the Namakkal District Collector,
Namakkal.

... 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 relating to the detention order passed by the second respondent, dated 22.12.2015, in C.M.P.No.77/Goonda/2015/M1 and to quash the same and to direct the respondents to produce the detenu, namely, Muni @ Muniswaran son of the petitioner, who is presently confined at the Borstal School and District Jail, Pudukkottai and to set the detenu at liberty.

For Petitioner : Mr.M.K.Sathish

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 mother of the detenu, namely, Muni @ Muniswaran, aged about 21 years, son of Nagaraj, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.77/Goonda/2015/M1, dated 22.12.2015, 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 Borstal School and District Jail, Pudukkottai, 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 had submitted that in the grounds of detention, the detaining authority had stated that the detenu Muni @ Muniswaan had been remanded in custody and lodged in the Borstal School, Paramathi, in respect of Elachipalayam Police Station Crime No.218/2015. It had been further stated that a bail application moved, on behalf of the detenu, before the Principal District and Sessions Court, Namakkal, in C.M.P.No.1079 of 2015, had been dismissed, on 7.12.2015. Further, the detaining authority had stated that in a similar case registered at Tiruchengode Rural Police Station Crime No.191/2015, bail had been granted to the accused concerned, by the Principal District Sessions Judge, Namakkal, in C.M.P.No.535/2015, on 9.6.2015 and therefore, there is real possibility of the detenu coming out on bail, by filing bail application before the higher courts. However, there are no materials available to show that a bail application is being moved, on behalf of the detenu, either by his relatives or by any other person, to take him out on bail. Thus, there is no real possibility of the detenu coming out on bail, in the near future. Therefore, the conclusion of the detaining authority that there is a real possibility of the detenu coming out on bail shows his non 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. On verification of the records, it is seen that the

bail application filed by the detenu, before Principal District and Sessions Court, Namakkal, in respect of Crime No.218 of 2015, on the file of Elachipalayam Police Station, had been dismissed, on 7.12.2015, vide order made in C.M.P.No.1079 of 2015. Further, the detaining authority had stated in the order of detention that there is real possibility of the detenu coming out on bail, by filing bail application, before the higher Courts, since in a similar case, in Crime No.191/2015, on the file of Tiruchengode Rural Police Station, bail had been granted to the accused concerned, by the Principal District Sessions Judge, Namakkal, in C.M.P.No.535/2015, vide order, dated 9.6.2015. However, no material had been produced to show that further bail application is being moved, on behalf of the detenu, either by his relatives or by any other person, to take him out on bail. In such circumstances, the statement of the detaining authority in the detention order that there is a real possibility of the detenu coming out on bail, shows the non application of mind on the part of the detaining authority. Thus, it is clear that the detention order has been passed by the detaining authority without proper application of mind and appreciation of facts. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 22.12.2015, 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 (CS VI)

/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 Magistrate and District Collector,
Namakkal District,
Office of the Namakkal District Collector,
Namakkal.

3.The Borstal School and District Jail,
Pudukottai.

4.The Joint Secretary to Government
Public (Law and Order),
Fort Saint George,
Chennai-09

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1900 of 2016

PVS (CO)
GN(30/01/2017)



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