

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

CORAM

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.319 of 2016

Vanaja ... Petitioner/Wife of Detenu

Vs.

1. The State of Tamil Nadu
rep.by its Secretary to Government
Prohibition & Excise Department (Home)
Fort St George, Chennai - 9.

2. The Commissioner of Police
Chennai Police. ... Respondents

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 detenu's detention order passed by the second respondent under the Tamil Nadu Act 14 of 1982 in No.95/2016 BCDFGISSSV dated 11.02.2016 to set aside the same and to direct the respondent to produce the petitioner's husband Rajkumar, S/o.Thangaraj aged about 45 years the detenu, now confined in Central Prison-II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Mohammed Aasif

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

[Order of the Court was made by G.CHOCKALINGAM,J.]

The petitioner, who is the wife of the detenu, RAJKUMAR, Son of Thangaraj, aged about 45 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.02.2016 against his husband branding him as a "GOONDA" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand

Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. Though many grounds have been raised in the petition, Mr.Mohammed Asif, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.Learned counsel appearing for the petitioner submitted that the Detaining Authority by relying upon a similar case registered by V-5 Thirumangalam Police Station in Cr.No.160 of 2013 wherein bail was granted to the accused by the learned Principal District and Sessions Judge, Chennai in CrI.MP.No.929 of 2013 on 12.02.2013 has stated that the detenu has real possibility of his coming out on bail in the cases registered by K-11, CMBT Police Station in Crime Nos.23 and 25 of 2016. However, in the booklet furnished to the detenu though the bail order has been furnished, the bail application has not been furnished. This non-furnishing of the important document has deprived the detenu from making an effective representation. This has not been duly verified by the Detaining Authority before passing the order of detention. Therefore, it is submitted that this is indicative of total non-application of mind on the part of the detaining authority and the same vitiates the detention order and is unsustainable in law.

5.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6.We have heard the learned counsel for both sides with regard to the facts.

7.As evidenced from page 104 of the Booklet furnished to the detenu, the English version of the Bail order relating to the bail granted to the co-accused in Cr.No.160 of 2013 registered by the Thirumangalam Police Station has been furnished; however, the bail application for the same has not been furnished. In such circumstances, the conclusion arrived at by the Detaining Authority in stating that there is real possibility of the detenu coming out on bail, cannot be unsustainable in law. Further the non-furnishing of the vital document has deprived the detenu from making an effective representation. Therefore, the above discrepancy vitiates the detention order and the same is liable to be set aside.

8. In the light of the above facts, we have no hesitation in quashing the order of detention on the above mentioned grounds.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the 2nd 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(CS VII)

//True Copy//

Sub Assistant Registrar

ga/vj2

To

1. The Secretary to Government
State of Tamil Nadu
Prohibition & Excise Department (Home)
Fort St George, Chennai - 9.
2. The Commissioner of Police
Chennai Police
3. The Superintendent
Central Prison-II
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

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ALA(CO)
CA(10/06/2016)