

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.6.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.394 of 2016

Solomon
detenue

... Petitioner/friend of the

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai-600 007.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records relating to the order of detention NO.117/BCDFGISSSV/2016 dated 16/02/2016 passed by the 2nd respondent and to quash the same and also to direct the detenue VELU S/O. GUNASEKAR who is presently detained in the Central Prision, PUZHAI to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.D.Gopi Krishnan

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

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ORDER
(Order of the Court was made by V.BHARATHIDASAN.)

The petitioner is the friend of the detenu Velu son of Gunasekar, who has been detained under Act 14 of 1982 as per the order of the second respondent by his proceedings in No.117/BCDFGISSSV/2016. Challenging the said detention order, the petitioner has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though many grounds have been raised in the petition, 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.

4. According to the learned counsel appearing for the petitioner, the detenu is in remand in 1st, 2nd adverse cases and in ground case in Cr.Nos.88, 107 and 112/2016 respectively registered in F5 Choolaimedu Police Station and he has moved bail applications for 1st adverse case in Crl.M.P.No.429 of 2016 before the XVII Metropolitan Magistrate, Court, Saidapet, Chennai and moved bail applications for 2nd adverse case and ground case in Crl.M.P.Nos.2354 and 2355 of 2016 respectively before the Principal Sessions Court, Chennai and the same are pending as on the date of the passing of the detention order. The detaining authority has arrived at the subjective satisfaction by placing reliance on similar cases wherein bails are granted by courts. Further, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in all the above stated cases and that if the detenu comes out on bail, he will indulge in such further activities, which are prejudicial to the maintenance of public order. The learned counsel would add that admittedly, in this case, the bail applications filed by the detenu in all the cases are pending. When bail applications are pending, then there is no presumption that the detenu would be granted bail. If that be so, there is no imminent possibility of the detenu coming out on bail on the basis of the bail granted in the similar case. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in the ground case.

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. As could be evidenced from the Grounds of Detention, the detenu is in remand in 1st, 2nd adverse cases and in ground case in Cr.Nos.88, 107 and 112/2016 respectively registered in F5 Choolaimedu Police Station and he has moved bail applications

for 1st adverse case in Crl.M.P.No.429 of 2016 before the XVII Metropolitan Magistrate, Court, Saidapet, Chennai and moved bail applications for 2nd adverse case and ground case in Crl.M.P.Nos.2354 and 2355 of 2016 respectively before the Principal Sessions Court, Chennai and the same is pending as on the date of the passing of the detention order. If that be so, there is no imminent possibility of the detenu coming out on bail in the said cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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

8. 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary,
State of Tamil Nadu,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai-600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

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

5.The Public Prosecutor,
High Court, Madras.

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