

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.5.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM
and
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No. 431 of 2016

Mrs. Revathi

... Petitioner/Wife
of the detenu

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the second respondent in B.C.D.F.G.I.S.S.V.No.02/2016 dated 05.01.2016 set aside the same, direct to produce the detenu Mr.Dhineshkumar @ Dhinesh, son of Karthikeyan, aged about 32 years, and presently detained in Central Prison, at Vellore before this Court and set him at liberty.

For Petitioner : Mr. A.D.Jagadish Chandira

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 is the wife of the detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in BCDFGISSV No.02/2016, dated 05.01.2016.

2. Though many grounds have been raised in the petition, Mr.A.D.Jagdish Chandra, 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. According to the learned counsel appearing for the petitioner, the detenu is in remand in third adverse case in Cr.No. 1362 of 2015 and in the ground case in Cr.No.1364 of 2015 of Vishnu Kanchi Police Station and he has moved two bail applications in Crime No.1362 of 2015 in C.M.P.No.19 of 2016 and in Crime No.1364 of 2015 in C.M.P.No.25 of 2016 respectively and the same were 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 a similar case registered at Siva Kanchi Police Station in Cr.No.688 of 2014 under Sections 294(b), 324, 307, 392, 397 IPC r/w 3 (i) Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992, wherein bail was granted to the accused Anandan by the learned District Sessions Court-II, Kancheepuram in CMP.No.46/2015 on 09.01.2015. This case is not that of the co-accused. Further, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case 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 the third adverse case as well as ground case 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 third adverse case as well as in the ground case.

4. 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.

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

6. As could be evidenced from the Grounds of Detention, the detenu is in remand in third adverse case in Cr.No. 1362 of 2015 and in the ground case in Cr.No.1364 of 2015 of Vishnu Kanchi Police Station and he has moved two bail applications in Crime No.1362 of 2015 in C.M.P.No.19 of 2016 and in Crime No.1364 of 2015 in C.M.P.No.25 of 2016 respectively and the same

were 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 adverse case. 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.

Sd/-

Vacation Officer

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor
High Court, Madras.

+1cc to Mr.A.D.Jagadish Chandira, Advocate, S.R.No.28705

H.C.P.No.431 of 2016

SV(CO)
CA(01/06/2016)