

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.440 of 2016

Yuvarani

.. Petitioner

vs.

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

2. The Commissioner of Police,
Chennai City Police,
Commissioner Office, Egmore,
Chennai-600 008.

.. Respondents

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.189/BCDFGISSSV/2016 dated 24/02/2016 passed by the 2nd respondent and to quash the same and also to direct the detenu SURESH S/O.MAHALINGAM who is presently detained in the Central Prison CENTRAL PRISON PUZHAI CHENNAI to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr. Ilayaraja Kandasamy

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

O R D E R

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.189/BCDFGISSSV/2016 dated 24.02.2016, whereby the detenu/husband of the petitioner, by name, Suresh son of

Mahalingam, aged 25 years, was ordered to be detained under the provisions 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".

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. Learned counsel appearing for the petitioner submitted that the detenu has been remanded in the 1st and 2nd adverse cases [Cr.Nos.1078 and 74 of 2015] and in the ground case in Cr.No.146/2016 registered by H8 Thiruvottiyur Police Station and the bail application filed by him in ground case before the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.709 of 2016 and bail applications filed in adverse cases in Crl.MP.Nos.1140/2016 and 1139/2016 on the file of the Judicial Magistrate Court, Thirvottiyur, are pending. But the Detaining Authority, in the Grounds of Detention, has relied upon a similar case in Cr.No.1536/2014 registered by H8 Thiruvottiyur Police Station, wherein the accused was granted bail by the Principal District and Sessions Court, Tiruvallur Chennai in Crl.MP.No.4188/2014. 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 has been remanded in the 1st and 2nd adverse cases [Cr.Nos.1078 and 74 of 2015] and in the ground case in Cr.No.146/2016 registered by H8 Thiruvottiyur Police Station and the bail application filed by him in ground case before the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.709 of 2016 and bail applications filed in adverse cases in Crl.MP.Nos.1140/2016 and 1139/2016 on the file of the Judicial Magistrate Court, Thiruvottiyur, are 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.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kua

To

1.The Secretary to Government,
State of Tamil Nadu,
Department Prohibition and Excise (Home),
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.

H.C.P.No.440 of 2016

rsy co
kra 28.06.2016



WEB COPY