

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

H.C.P.No.528 of 2016

S. Sathya W/o Senthil Kumar ..Petitioner/Sister of the Detenue
Vs.

- 1.The State represented by
the Secretary to the Government
Prohibition and Excise Department
Fort St. George, Secretariat,
Chennai-9.
- 2.The Commissioner of Police
(Detaining Authority)
Greater Chennai
Egmore, Chennai-8.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent, in Memo No.252/BCDFGISSSV/2016, dated 5.3.2016, against the detenu, viz., Thiru.Sakthivel, son of Arumugam, aged about 36 years, who is confined at the Central Prison, Puzhal, Chennai, and to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : M/s.D.Kumar

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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ORDER

[Order of the Court was made by S. BASKARAN, J.]

This Habeas Corpus Petition has been filed, by the sister of

the detenu, namely, Sakthivel, son of Arumugam, aged about 36 years, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in Memo No.252/BCDFGISSSV/2016, dated 05.03.2016, passed by the second respondent, detaining the detenu under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, 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 Central Prison, Puzhal, Chennai and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty, forthwith.

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

3. Though, various grounds had been raised in the affidavit filed in support of the petition, the learned counsel, appearing on behalf of the petitioner, had assailed the order of detention mainly on the ground that though two adverse cases had been mentioned, there is no mention about the filing of the bail application in those cases either by the detenu or by his relatives.

4. Further, the learned counsel appearing for the petitioner has submitted that in the detention order, it is stated that, in a case registered at T-10 Thirumullaivoyal Police Station Cr.No.690 of 2015 under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) I.P.C. bail was granted by the Court of Principal Sessions Judge at Thiruvallur in CrI.M.P.No.3098 of 2015. However, it has not been stated as to whether it is a similar case or in that case whether bail had been granted to the detenu. There is nothing in the order of detention and therefore, it clearly shows the non application of mind on the part of the detaining authority. Hence, the order of the detention is liable to be quashed.

5. The said submission 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.

6. A perusal of the order of the detention reveals that there is no mention about the filing of the bail application in the adverse cases or granting of bail to the detenu in those cases. Further, in the order of detention, it is mentioned that in a case in Cr.No.690 of 2015 on the file of T-10 Thirumullaivoyal Police Station, bail had been granted by the Principal District Court at Thiruvallur, but it has not been mentioned as to whether the bail had been granted to the detenu

or to the co-accused. Even that case could not be a similar case as the offences are not similar and therefore, we are of the view that there is non application of mind on the part of the detaining authority in passing the order of detention. Hence, we are inclined to set aside the impugned detention order.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 05.03.2016, 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 (CO)

/true copy/

Sub Asst. Registrar

rnb

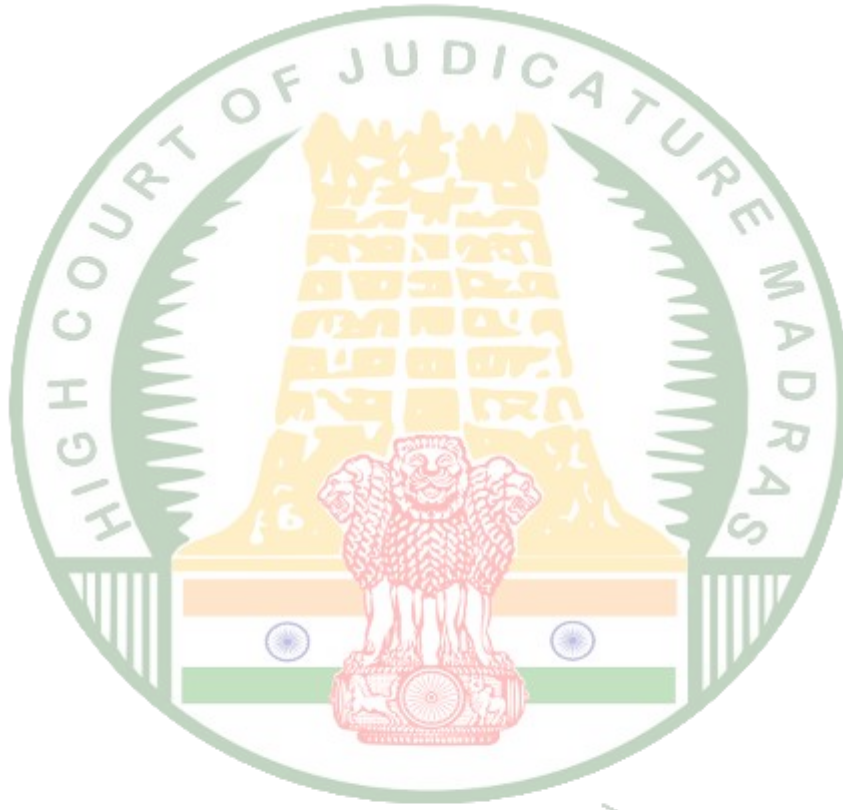
To

- 1.The Secretary to Government
Home (Police) Department
Secretariat, Chennai-9.
 - 2.The Commissioner of Police
(Detaining Authority)
Greater Chennai
Egmore, Chennai-8.
 - 3.The Public Prosecutor, High Court, Madras.
 - 4.The Superintendent of central prison,
Puzhal chennai (Induplicate for communication to Detenue)
 - 5.The Public Prosecutor, High court, Madras.
- +1cc to Mr. D.Kumar Sr. No.60709

PVS (CO)
GN(19/01/2017)

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