

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM

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

H.C.P.NO.579 OF 2016

Saraswathi

... Petitioner

Vs.

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.
2. The Commissioner of Police
Chennai Police,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in connection with the order of detention passed by the second respondent dated 07.03.2016 in BCDFGISSSV NO.260/2016 against the son of the petitioner, detenu Mohanasundaram @ Chittaal, M/A 32, S/o. Dhanasing, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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

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O R D E R
[Order of the Court was made by M.JAICHANDREN, J.]

This Habeas Corpus Petition has been filed by the mother of the detenu, namely Mohanasundaram @ Chittaal, aged 32 years, Son of Dhanasing, to issue a Writ of Habeas Corpus, to call for the records in BCDFGISSSV No.260/2016, dated 07.03.2016, 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, Sexual 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, as well as the learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

3. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel appearing on behalf of the petitioner, has assailed the impugned detention order mainly on the ground that the detaining authority had stated, in paragraph No.4 of the order of detention, that the detenu had moved bail applications for M-3, Puzhal Police Station, Crime Nos.26/2016 and 27/2016, before the Court of Principal District and Sessions Judge, Thiruvallur, in Crl.M.P.Nos.711/2016 and 697/2016, and the same are pending. He had also stated that in a similar case at M-3, Puzhal Police Station, Crime No.800/2013, under Sections 341, 392, 397 and 506(ii) IPC, bail had been granted by the Court of Principal Sessions Judge, Thiruvallur, to the accused, namely Kuzhanthaivelu, in Crl.M.P.No.1228/2013. Therefore, it is likely that the detenu would come out on bail, in M-3 Puzhal Police Station, Crime Nos.26/2016 and 27/2016, since bail had been granted by Courts, in similar cases, after sometime. It had also been pointed out that the similar case, referred to, by the detaining authority, in M-3, Puzhal Police Station, Crime No.800/2013, is under Sections 341, 392, 397 and 506(ii) IPC. However, the second adverse case relating to the detenu, in Crime No.26/2016, is under Sections 302 @ 147, 148, 302 read with 120 (b), 149 @ 147, 148, 302 read with 120(b), 149 and 213 IPC.

4. The said submissions 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.

5. In such circumstances, we find that there is non-application of mind on the part of the detaining authority, in passing the impugned detention order. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 07.03.2016, 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/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police
Greater Chennai
Veperiy,
Chennai - 600 007.
3. The Superintendent of Prisons,
Central Prison
Puzhal,
Chennai - 600 066.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor
High Court of Madras.

H.C.P.NO.579 OF 2016

SKV(CO)
CA(23/11/2016)

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