

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

H.C.P.No.742 of 2016

Kurshith

.. Petitioner

Vs

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

2.The Commissioner of Police,
Salem City,
Salem.

.. 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 pertaining to the order of detention, dated 27.1.2016 passed by the second respondent, in C.M.P.No.9/I.T.O./Salem city/2016, quash the same and produce the detenu Saleem @ Sanaullah, aged about 42 years, son of late Maqbool, who is confined in the Central Prison, Salem, before this court and to set him at liberty.

For Petitioner : Mr.R.Thirumoorthy

For Respondents : Mr.V.M.R.Rajentran, APP

ORDER

[Order of the Court was made by **M.JAICHANDREN,J**]

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Saleem @ Sanaullah, aged about 42 years, son of Maqbool, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.9/I.T.O./Salem city/2016, dated 27.1.2016, passed by the second respondent, detaining the detenu, under Section 3(1) 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 “Immoral Traffic Offender”, in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body of the detenu and to 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.5 of the order of detention, that the relative of the detenu is taking steps to take him out on bail, in Annadanapatty Police

Station Crime No.10/2016, by filing bail application before the appropriate Court. It had also been pointed out that no statement had been recorded from the relative of the detenu with regard to the claim that he is taking steps to move a bail application, on behalf of the detenu and no such statements had been furnished to the detenu.

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. It is noted from the records available that no statement had been recorded from the relative concerned to substantiate the claim that he is taking steps to move a bail application on behalf of the detenu, to take him out on bail, in the above said case. In such circumstances, we find that there is non application of mind on the part of the detaining authority, in passing the 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 27.1.2016, 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.

[M.J.,J.] [T.M.,J.]
14.12.2016

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police,
Salem City,
Salem.
- 3.The Public Prosecutor,
High Court, Madras.

M.JAICHANDREN,J.
AND
T.MATHIVANAN, J.

vvk

H.C.P.No.742 of 2016

14.12.2016