

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

and

THE HON'BLE MR.JUSTICE S.BASKARAN

H.C.P.No.816 of 2016

Nisha

... Petitioner

Vs

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

2.The District Magistrate and  
District Collector,  
Kancheepuram District,  
Kancheepuram.

... 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 in his proceedings in BCDFGISSSV No.25/2016, dated 24.3.2016, and to quash the same and to direct the respondents to produce the body of the petitioner's husband, namely, Gobi, S/o.Thulukkanam, who is detained in the Central Prison, Vellore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.Kumarasamy

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

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ORDER

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

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Gobi, aged about 29 years, son of Thulukkanam, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.25/2016, dated 24.03.2016, 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 "Goonda", in the Central Prison, Vellore, 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. It is contended by the learned counsel appearing on behalf of the petitioner that the petitioner is not in a position to move the bail application in Crime No.117 of 2016 on the file of the Sivakanchi Police Station and that the detenu, namely, the husband of the petitioner, is still in custody. However, in paragraph 5 of the detention order, it has been stated that there is a real possibility of the detenu coming out on bail in the immediate future, which shows the lack of application of mind on the part of the detaining authority. It is also pointed out by the learned counsel appearing on behalf of the petitioner that the detaining authority has to arrive at the subjective satisfaction, taking into account the present prevailing circumstances. Thus, the subjective satisfaction arrived at by the detaining authority reflects the non application of mind.

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.

5. In view of the submissions made by the learned counsels appearing on behalf of the parties, it is noted that the petitioner is not in a position to move Bail application in Crime No.117 of 2016, which is not refuted by the learned Additional Public Prosecutor. Further, the detaining authority has to arrive at the subjective satisfaction taking into account the present prevailing circumstances. Thus, the subjective satisfaction arrived at by the detaining authority reflects the total non

application of mind. In such circumstances, the contention of the petitioner has to be accepted. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 24.03.2016, 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vvk

To

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

2.The District Magistrate and  
District Collector,  
Kancheepuram District,  
Kancheepuram.

3.The Public Prosecutor,  
High Court, Madras.

4. The Superintendent,  
Central Prison, Vellore.

5. The Joint Secretary to Govt.,  
Public (Law & Order) Dept.,  
Secretariat, Chennai-9.

+1 CC to Mr.B.Kumarasamy, Advocate Sr.No.58914

H.C.P.No.816 of 2016

CTR(CO)  
VS(16.11.2016)