

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.BASKARAN

H.C.P.No.921 of 2016

Dinesh Kumar

.. Petitioner

Vs

1. State of Tamil Nadu

Rep. by

The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing the respondents to produce the petitioner's brother by name Premkumar @ Prem, Son of Kandasamy @ Mani, aged about 27 years before this Court, now confined in Central Prison, Vellore and set him at liberty and to call for the records pertaining to the order of detention passed in BCDFGISSSV No.30/2016, dated 09.04.2016, passed by the 2nd respondent and set aside the same.

For Petitioner : Mr.K.Thenrajan

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

ORDER

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

This Habeas Corpus Petition has been filed by the brother of the detenu, namely, Premkumar @ Prem, son of Kandasamy @ Mani, aged about 27 years, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.30/2016, dated 09.04.2016, 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 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 the order of detention, that in a similar case registered against another accused Sasikumar and others, in Maraimalai Nagar Police Station Crime No.821 of 2015, the accused persons were released on bail, in Crl.M.P.No.3658 of 2015, on 22.12.2015, by the Principal District and Sessions Court, Chengalpattu. In the said case, statutory bail had been granted, under Section 167(ii) of the Criminal Procedure Code. Therefore, it cannot be said that in the ground case, in Crime No.117 of 2016, on the file of the Sivakanchi Police Station, there is a real possibility of the detenu coming out on bail. Thus, it is a clear case of non application of mind on the part of the detaining authority in passing the order of detention.

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 the Detaining Authority, while passing the detention order, had mentioned in the detention order that in a similar case registered, in Crime No.821 of 2015, on the file of the Maraimalai Nagar Police Station, the accused persons were released on bail, in Crl.M.P.No.3658 of 2015, by an order, dated 22.12.2015, passed by the Principal District and Sessions Court, Chengalpattu. However, on a perusal of the records available, it had been found that, in Crime No.821 of 2015, statutory bail had been granted, under Section 167(ii) of the Criminal Procedure Code. Therefore, it is clear that there is no real possibility of the detenu coming out on bail, in the ground case, in Crime No.117 of 2016. 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 09.04.2016, 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 (CS VI)

/true copy/

Sub Asst. Registrar

rnb

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent, Central Prison,
Vellore.
- 5.The Joint Secretary to Government
Public Law and Order
Fort St.George, Chennai-9

सत्यमेव जयते

H.C.P.No.921 of 2016

MP (CO)
GN (23/01/2017)

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