

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

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

H.C.P.No.932 of 2016

R.Siva Kumar .. Petitioner / father of the detenu
Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Chennai City. ... 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 16.3.2016, in memo No.310/BCDFGISSSV/2016, against the petitioner's son Kalaiarasan, son of Sivakumar, aged about 29 years, who is confined at the Central Prison, Puzhal II, 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 : Mr.S.Senthilvel

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

ORDER

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

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Kalaiarasan, son of Sivakumar, aged about 29 years, to issue a Writ of Habeas Corpus, to call for the records, in No.310/BCDFGISSSV/2016, dated 16.3.2016, 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 "Sexual Offender", 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 the order of detention, that in a similar case registered, in Crime No.3 of 2014, bail was granted to the accused, by the learned Sessions Judge, Mahila Court, Chennai, in Crl.M.P.No.722 of 2015. But, 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.26 of 2016, on the file of H-8 Thiruvottiyur Police Station, there is a 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.3 of 2014, bail was granted, in Crl.M.P.No.722 of 2015, by the Sessions Judge, Mahila Court, Chennai. However, on a perusal of the records available, it had been found that in Crime No.3 of 2014, statutory bail had been granted, under Section 167(ii) of the Criminal Procedure Code. Therefore, it is clear that there is no imminent possibility of the detenu coming out on bail, in the ground case, in Crime No.26 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 16.3.2016, 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 (J)

/true copy/

Sub Asst. Registrar

vvk

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,
Chennai City.
3. The Superintendent
Central Prison
Puzhal, Chennai
4. The Joint Secretary to government
Public (Law and order)
Fort St. George, Chennai-9
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.932 of 2016

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