

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

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

H.C.P.No.956 of 2016

Babuji

... Petitioner

Vs

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

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

... Respondents

Prayer: I 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 17.4.2016, in C3.D.O.No.26/2016 against the petitioner's brother Thangam, male, aged about 28 years, son of Palani, who is confined at the Central Prison, Vellore and set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the brother of the detenu, namely, Thangam, son of Palani, aged about 28 years, to issue a Writ of Habeas Corpus, to call for the records, in C3.D.O.No.26/2016, dated 17.4.2016, 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 "Bootlegger", 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. The learned counsel for the petitioner contends that there is delay in depositing the seized properties relating to Crime No.122 of 2016. According to him, it was seized on 23.3.2016 and the same was received in Court only on 28.3.2016, as per the endorsement. This delay, according to the petitioner, is fatal to the case of prosecution. Further, in the detention order, the possibility of the detenu coming out on bail in the ground case in Crime No.122 of 2016, alone has been considered and the possibility of the bail in two adverse cases, i.e., Crime Nos.474 of 2015 and 29 of 2016, on the file of the Ranipet Prohibition Enforcement Wing, was not considered. Therefore, it is clear that there is 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 impugned detention order, had considered the possibility of the detenu coming out on bail in the ground case, in Crime No.122 of 2016, on the file of the Arakkonam Prohibition Enforcement Wing. However, he had not considered the possibility of the detenu coming out on bail in two adverse cases, i.e., Crime Nos.474 of 2015 and 29 of 2016, on the file of the Ranipet Prohibition Enforcement Wing. Thus, this clearly shows the non application of mind on the part of the detaining authority, while passing the order of detention. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 17.04.2016, 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/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

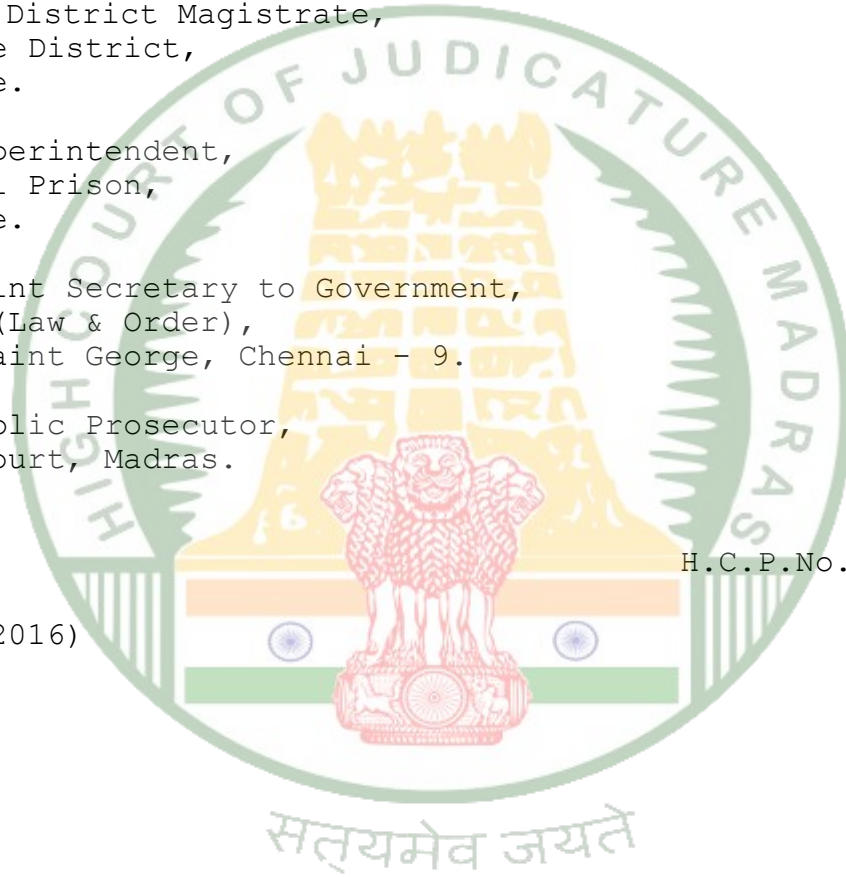
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To

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

CP(CO)
CA(07/12/2016)

H.C.P.No.956 of 2016



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