



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.(MD)No.595 of 2016

Gowsalya

: Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -9.

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

3.The Inspector of Police,
NIB CID., Sivagangai,
I/c.NIB CID.,
Ramanathapuram.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 2nd respondent in Cr.M.P.No.13/D.O/2016, dated 02.05.2016 and to quash the same and direct respondents to produce the body of the detenu, Thangapandi (aged 26 years) S/o.Karthigaisamy, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner

: Mr.M.Karunanithi,
for Mr.B.Pandiarajan

For Respondents

: Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by S.NAGAMUTHU, J.)

The petitioner is the wife of the detenu viz., Thangapandi S/o.Karthigaisamy, aged about 26 years. The detenu has been detained, as per the order of the second respondent, dated 02.05.2016, under Section 2(e) of the Tamilnadu Act 14 of 1982, as amended, in which he is "Drug Offender". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.



2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that the subjective satisfaction arrived at by the Detaining Authority that there was a possibility of the detenu coming out on bail, is totally baseless. He would submit that when there was no bail application at all filed by the detenu and when there is no evidence also to show that there was steps taken by the detenu or his relatives to move an application for bail in the ground case, the question of the detenu coming out on bail does not arise. Thus, there was no real possibility at all for the detenu to come out on bail in the ground case, the learned counsel contended.

4. The learned Additional Public Prosecutor would further submit that the detenu was involved in the offences punishable under NDPS Act. He would further submit that there was every possibility for the detenu to move an application for bail in the second adverse case either before the Court of Sessions or before the High Court, in which, there was every possibility for him to come out on bail, because in similar cases, similarly placed persons were granted bail either by the Sessions Court or by the High Court. Hence, the subjective satisfaction arrived by the detaining authority is reasonable.

5. We have considered the above submissions.

6. In our considered view, if an application for bail is moved before any competent Court by the detenu, then only the question of coming out on bail would arise. In such a situation, the Detaining Authority may be satisfied that there is a real possibility of the detenu coming out on bail based on the fact that in similar cases, similarly placed persons have been granted bail. But, in this case, there was no such bail application filed by the detenu in the ground case and there was no attempt also made by himself or any of his relatives to move any application for bail. When that be so, absolutely, there was no possibility of the detenu coming out on bail in the ground case. Accordingly, the satisfaction arrived by the detaining authority is totally baseless. In such view of the matter, the detention order is liable to be set aside on this sole ground.

7. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.13/D.O./2016, dated 02.05.2016, is quashed. The detenu, namely, Thangapandi, S/o.Karthigaisamy, aged



about 26 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -9.
- 2.The District Collector and District Magistrate,
Ramanathapuram District,
Ramanathapuram.
- 3.The Inspector of Police,
NIB CID., Sivagangai,
I/c.NIB CID.,
Ramanathapuram.
- 4.The Superintendent, Central Prison,
Madurai (In duplicate for communication to Detenu)
- 5.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-9
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

gcg
RL/8C/3P/SKS/RR/12.12.2016

Order made in
H.C.P. (MD) No.595 of 2016

Dated:
11.11.2016