

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

H.C.P.No.39/2017

Riyas @ Riyas Ahamed ... Petitioner

Vs

1. The State rep. by the
rep. by its Secretary to Government
Prohibition and Excise Department (Home),
Fort St.George
Chennai 600 009.
2. The Commissioner of Police,
Salem City, Salem. ... 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 CMP.No.94/Sexual Offender/Salem City/2016, dated 22.12.2016 on the file of the 2nd respondent and quash the same as illegal and consequently, direct the respondents to produce the petitioner's brother Payas @ Payas Ahamed, S/o.Suguman Batsha, aged about 34 years, who is now detained in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhi Kumar

For Respondents : Mr.E.Raja,
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition is filed, by the brother of the detenu, namely, Payas @ Payas Ahamed, aged 34 years, Son of Suguman Batsha, to issue a Writ of Habeas Corpus, to call for the records, in CMP.No.94/Sexual Offender/Salem City/2016 dated 22.12.2016, passed by the 2nd 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 14/1982), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Salem, 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 and 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, had assailed the impugned detention order mainly on the ground that the detaining authority had stated, in Paragraph No.5 of the order of detention, that the bail application filed on behalf of the detenu in Kitchipalayam P.S.Cr.No.306/2016 under Section 363 @ 506(ii)IPC, Section 370(A)(2) IPC, Sections 5,6 of Protection of Children from Sexual Offences Act, 2012, Section 3(1), 4(2)(c), 5(1)(d) of Immoral Traffic (Prevention) Act and Section 16 read with 17 of Protection of Children from Sexual Offences Act, 2012 was dismissed by the learned Sessions Judge, Mahila Court, Salem in CMP.No.1221/2016 dated 16.12.2016. However, in the detention order, it had been stated that the relatives of the detenu are taking action to take him out on bail, in Kitchipalayam P.S.Cr.No.306/2016, by filing bail application before the appropriate Court. It had also been pointed out that no statements had been recorded from the relatives of the detenu with regard to the claim that they are taking steps to move bail application, on behalf of the detenu and no such statements had been furnished to the detenu.

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. It is noted from the records available that no statements had been recorded from the relatives concerned to substantiate the claim that they are taking steps to move bail applications on behalf of the detenu, to take him out on bail, in the above said case. 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 22.12.2016, passed by the 2nd 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 VIII)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government
Prohibition and Excise Department (Home),
Fort St.George
Chennai 600 009.
2. The Commissioner of Police,
Salem City, Salem.
3. The Superintendent of Police,
Central Prison, Salem.
4. The Joint Secretary to Government, Public (L & O),
Fort St.George, Chennai-9
5. The Additional Public Prosecutor,
High Court, Madras.

sks (co)
ss (5/6/2017)

H.C.P.No.39/2017

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