

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN
and
THE HONOURABLE MR.JUSTICE S. BASKARAN

H.C.P.No.4 of 2017

Prema @ Premalatha

..Petitioner

Vs.

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

2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600 007.

..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, pertaining to the order of detention passed by the 2nd respondent in Memo No. 1178/B.C.D.F.G.I.S.S.S.V/2016 dated 28.11.2016, set aside the same and direct to produce the detenu Mr.Vetriselvan, S/o. Srinivasan, aged about 47 years and presently detained in Central Prison at Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :: Mr.A.D. Jagadish Chandra

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

O R D E R

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

The petitioner, who is the wife of the detenu Vetriselvan, S/o Srinivasan, has come up with this habeas

corpus petition, challenging the detention order passed by the 2nd respondent, vide proceedings in Memo No. 1178/B.C.D.F.G.I.S.S.S.V/2016 dated 28.11.2016.

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

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on paragraph No.3 of the Grounds of Detention, wherein, the Detaining Authority has stated as follows:

"3. I am also aware that Thiru Vetri Selvan is in remand in Chennai, Egmore, Greater Chennai Police, Video Piracy Cell, Central Crime Branch, Team X, Crime No. 341/2016 and the sponsoring authority stated that Thiru Vetri Selvan moved a bail application in Central Crime Branch, Team X, Crime No. 341/2016 before the Hon'ble Chief Metropolitan Magistrate Court, Egmore at Allikulam, Chennai - 3 in Crl.M.P. No. 8152/2016, the same was dismissed on 14.11.2016 in the CMM Court, further, accused remand extended on 17.11.2016 till 01.12.2016 by the CMM Court and the accused moved another bail application in Central Crime Branch, Team-X, Crime No. 341/2016 before the Hon'ble Principal Sessions Judge, Sessions Court at Chennai vide Crl.M.P. No. 19601/2016, dated 16.11.2016, the same was dismissed on 24.11.2016. Further, the accused again moved another bail application in Central Crime Branch, Team X Crime No. 341/2016 before the High Court of Judicature at Madras in Crl.O.P. No. 25890/2016 dated 28.11.2016 and the same is pending in High Court, Chennai. In a similar case, registered under Section 52(A), 68(A), 51 r/w 63 & 65 of Copy Right Act, 1957 and 292(2)(a) IPC registered in Chennai, Egmore, Greater Chennai Police, Video Piracy Cell, Central Crime Branch, Team X Cr.No. 326/2016, dated 15.10.2016, bail was granted by the learned Hon'ble Principal Sessions Judge, Sessions Court at Chennai vide Crl.M.P. No. 19792/2016. Hence, I infer that there is real possibility of his coming out on bail in Video Piracy Cell, Central Crime Branch, Team X Cr.No. 341 case by filing another bail application before the appropriate court,...."

According to the learned counsel for the petitioner, there cannot be any presumption that the detenu would come out on bail on mere pendency of bail application. Moreover, according to the learned counsel, the similar case, in Cr.No. 326/2016, on the file of Greater Chennai Police, Video Piracy Cell, Central Crime

Branch, Team X relied on by the Detaining Authority, in which bail has been granted by the Sessions Court, Chennai, the detenu is neither an accused nor a co-accused in the said case and when the bail application of the detenu is pending before the High Court, there is no possibility of bail being granted by a Subordinate Court. Therefore, the learned counsel would submit that there is total non-application of mind on the part of the Detaining Authority in passing the order of detention and hence, the same is liable to be set aside.

4. Heard the learned Additional Public prosecutor, who would submit that the order of detention has been passed on cogent and sufficient materials and the same has to be sustained.

5. We have considered the rival submissions. As rightly contended by the learned counsel for the petitioner, when a bail application is pending, it cannot be presumed that the detenu would come out on bail and mere pendency of the bail application would not enable the Detaining Authority to conclude that the Court would certainly grant bail to the detenu. It is nothing but pre-judging the matter. Further, when the bail application of the detenu is pending before the High Court, the grant of bail by a Subordinate Court, in a similar case, where the detenu is neither an accused nor a co-accused, cannot be a ground for the Detaining Authority to conclude there is every likelihood of the detenu coming out on bail in the ground case. Thus, in our considered view, without making proper application of mind relating to these facts, the Detaining Authority has passed the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 28.11.2016, 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/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

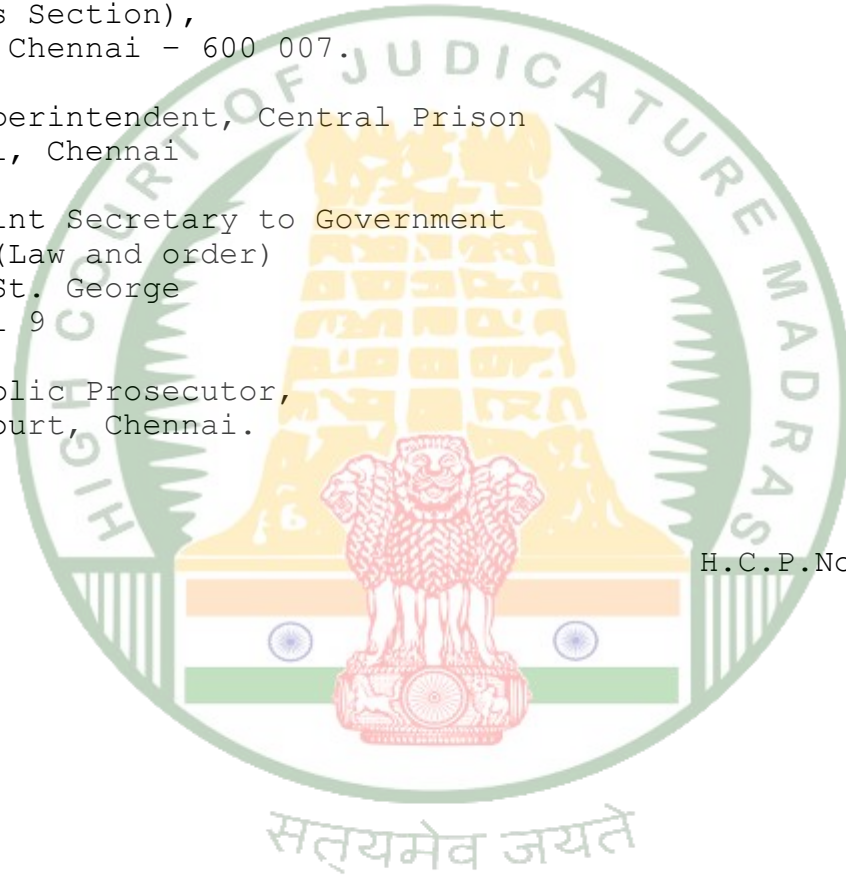
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To

1. The Principal Secretary to Government,
Home, Prohibition & Excise
Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police/
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai - 600 007.
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, Chennai.

SKS (CO)
sp/13/6

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