

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.05.2017

CORAM

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

H.C.P.No.53 of 2017

Senthamarai

.. Petitioner

Vs.

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

2. The Commissioner of Police,
Greater Chennai.

.. 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 26.09.2016 in Memo No.1068/BCDFGISSSV/2016, against the petitioner brother Kumaresan, male aged 30 years, S/o Ayyasamy, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

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ORDER

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

This Habeas Corpus Petition has been filed by the brother of the detenu, namely, Kumaresan, male, aged 30 years, S/o Ayyasamy, 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 26.09.2016 in Memo No.1068/BCDFGISSSV/2016, against the petitioner brother Kumaresan, male aged 30 years, S/o Ayyasamy, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before the Court and set him at Liberty.

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 the ground that though in a ground case, bail application in Cr.No.1508/2016 is pending and in the adverse case, there was no bail application pending in Crime Nos.1512/2016, 3098/2016 and 1621/2016, the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which cases there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

4. The learned Additional Public prosecutor would submit that in the Special report submitted by the Inspector of Police, there is a statement to the effect that the relatives of the detenu were taking steps to file bail application seeking bail in connection with the case in Crime Nos.1512/2016, 3098/2016 and 1621/2016

5. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, in the adverse cases, there was no bail application filed by the detenu seeking bail in Crime Nos.1512/2016, 3098/2016 and 1621/2016 on the file of S-14 Peerkankaranai Police Station, S-15 Selaiyur Police Station and S-11 Tambaram Police Station respectively and in the ground case bail application in Cr.No.1508/2016 is pending. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority, except the report of the Inspector of Police. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority, except the report of the Inspector of Police. Even the report of the Inspector of Police does not spell out as to how he came to know that the relatives were taking steps to file application seeking bail. Full details as to who are those relatives, who were taking steps to file bail application also have not been mentioned. 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 26.09.2016 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

To

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai.
3. The Superintendent,
Central Prison Puzhal, Chennai.
4. The Joint Secretary to Government Public
Law & Order,
Fort Saint George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.53 of 2017

MG(CO)
CS/08/06/17

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