

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.89 of 2017

Jaffarullah, Male/aged 63 years,
S/o Kadhar Basha

...Petitioner

/versus/

1. State of Tamil Nadu rep.by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009

2.The Commissioner of Police/Detaining Authority,
Coimbatore City.Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records, relating to petitioner's son detention under Tamil Nadu 14 of 1982 vide detention order, dated 02.01.2017 on the file of the second respondent herein made in proceedings C.No.01/G/IS/2017 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely, J.Sikkandar Badhusha, son of Jaffarullah, aged 31 years before this Court and set the petitioner's son at liberty from detention, now petitioner's son detailed at Central Prison, Coimbatore.

For Petitioner : Mr.C.C.Chellappan

For respondents: Mr.V.M.R. Rajentren
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by M.V. MURALIDARAN, J.,)

The petitioner, who is the father of the detenu J.Sikkandar Badhusha, S/o Jaffarullah, has come up with this habeas corpus petition, challenging the detention order passed against by the

second respondent, vide proceedings No.C.No.01/G/IS/2017, dated 02.01.2017.

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 there was no bail application pending in Crime No.1157/2016 i.e. the ground case, the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which case 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 No.1157/2016.

5. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in Crime No.1157/2016 on the file of E-2 Peelamedu Police Station. 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 02.01.2017 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(CS II)

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Sub Assistant Registrar

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To

1. State of Tamil Nadu rep.by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009
- 2.The Commissioner of Police/Detaining Authority,
Coimbatore City.
3. The Superintendent
Central Prison, Coimbatore
- 4.The Joint Secretary to Government
Public Law and Order
Fort St.George Chennai-9
5. The Public Prosecutor, High Court, Chennai.

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