

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

H.C.P.No.1399 of 2016

Vicky @ Vignesh @ Kozhikal Vicky .. Petitioner

Vs

- 1.The Government of Tamil Nadu,
rep by its Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police,
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 on the file of the second respondent in detention order Memo No.244/BCDFGISSSV/2016, dated 4.3.2016 and to quash the same and to direct the respondents to produce the body of the petitioner Vicky @ Vignesh @ Kozhikal Vicky, aged about 23 years, the detenu, confined in the Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.J.Samiullah

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

ORDER

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

This Habeas Corpus Petition has been filed, by the detenu, namely, Vicky @ Vignesh @ Kozhikal Vicky, aged about 23 years, son of Murugaiya, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in

No.244/BCDFGISSSV/2016, dated 4.3.2016, passed by the second respondent, detaining the detenu under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), branding him as a "Goonda", in the Central Prison, Puzhal, Chennai, and to quash the same and to direct the Respondents to produce the body of the detenu and to 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 on behalf of the State and we have also perused the records, carefully.

3. Though, several grounds had been raised by the petitioner, while challenging the impugned order of detention, dated 4.3.2016, the learned counsel, appearing on behalf of the petitioner, had pointed out that in paragraph 3 of the grounds of detention, the detaining authority had stated that one Kannan, son of Harikrishnan, residing at No.26, Desikanandhapuram I Street, Vysarpadi, Chennai-39 and who is running a waste items shop, was proceeding through Muthu Street and Dr.Ambedkar College Road junction, to go to the market, at about 9.00 p.m., on 10.2.2016. It had been stated that two persons have wrongfully restrained him and threatened him, by using abusive words. It had also been stated that the said persons, namely, Robert and Kozhikal Vicky, had taken away Rs.1000/- from the shirt pocket of Kannan, after threatening him with a knife. It had been further submitted that Kannan had proceeded to P-3 Vyasarpadi Police Station and had lodged a complaint with regard to the said incident. The said complaint had been registered, on the file of P-3 Vyasarpadi Police Station, in Crime No.80 of 2016, under Sections 341, 336, 294 (b), 427, 392 read with Section 397 and 506(ii) of the Indian Penal Code. However, from page No.38 of the booklet furnished to the detenu, it is noted that one A.Rajendran had given the complaint to the Inspector of Police, P-3 Vyasarpadi Police Station, on 10.2.2016, with regard to the alleged incident. Thus, there is non application of mind on the part of the detaining authority, in passing the order of detention. Hence, the detention order is vitiated and the same is liable to be quashed.

4. The said submission made by the learned counsel appearing on behalf of the petitioner, had not been refuted by the learned Additional Public Prosecutor appearing on behalf of the respondents.

5. Considering the submissions made by the learned counsels appearing on behalf of the parties concerned, it is

found that the detaining authority had stated in paragraph 3 of the grounds of detention that one Kannan had lodged a complaint, with regard to the alleged incident, on 10.2.2016 and that based on the said complaint, a case had been registered, in Crime No.80 of 2016, on the file of P-3 Vyasarpadi Police Station. However, it is noted from page No.38 of the booklet furnished to the detenu that one A.Rajendran had given the complaint to the Inspector of Police, P-3 Vyasarpadi Police Station, on 10.2.2016, with regard to the alleged incident. Thus, there is non application of mind on the part of the detaining authority in passing the order of detention. Therefore, we are inclined to set aside the impugned detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 4.3.2016, 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

//True Copy//

Sub Assistant Registrar

vvk
To

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

+1cc to Mr.J. Samiullah, Advocate, S.R.No.2176

rj (CO)
md(02/01/2017)

H.C.P.No.1399 of 2016