

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM

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

H.C.P.No.1442 of 2016

Palgani

.. Petitioner

Vs

1.State of Tamil Nadu

Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Coimbatore City,
Coimbatore.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the entire records from the second respondent in connection with Memo C.No.15/G/IS/2016, dated 11.4.2016 and to quash the same and to produce the petitioner's son, J.Johnson Abraham @ Johnson, son of Joseph, aged about 44 years, now detained in the Central Prison, Coimbatore, before this Court and to set him at liberty.

For Petitioner : Mr.P.K.Ilavarasan

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

ORDER

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, J.Johnson Abraham @ Johnson, aged about 44 years, son of Joseph, to issue a Writ of Habeas Corpus, to call for the records, in C.No.15/G/IS/2016, dated 11.4.2016, passed by the second 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 of 1982), branding him as a "Goonda", in the Central Prison, Coimbatore, 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, as well as 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 contends that in paragraph 7 of the grounds of detention, the detaining authority had relied on the similar case registered, in Crime No.296/2010, on the file of Thoothukudi District Vadapagam Police Station, for the offence under Sections 296(b), 384, 324, 307, 506(ii) of the Indian Penal Code and Section 25(1)(A) of the Arms Act, wherein bail had been granted to the accused concerned, by the learned Principal District Sessions Judge, Thoothukudi, in CrI.M.P.No.758 of 2011, on 1.4.2011. The learned counsel had further submitted that a perusal of the copy of the bail order furnished to the detenu, in page No.268 of the booklet supplied to him, would show that the offences involved in the said bail application were under Sections 120(B), 294(b), 341, 323, 307, 387 and 506(ii) I.P.C. and 25(1)(a) of the Arms Act. The learned counsel had further submitted that the ground case had been registered against the detenu, in Crime No.34 of 2016, on the file of E-2 Peelamedu Police Station, for the offence under Sections 457, 365, 307, 395 read with Section 397, 506(ii) I.P.C. and Section 25(1)(A) of the Arms Act. Therefore, in the similar case relied upon for passing the Detention Order, the provisions are not similar to the ground case against the detenu. Thus, there is non application of mind on the part of the detaining authority while passing the order of detention.

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 appearing on behalf of the respondents.

5. Considering the submissions made by the learned counsels appearing for parties concerned and on a perusal of the records available, it is found that the detaining authority had relied on a similar case registered, in Crime No.296 of 2010, on the file of Thoothukudi District Vadapagam Police Station, for the offence under Sections 296(b), 384, 324, 307, 506(ii) of the Indian Penal Code and Section 25(1)(A) of the Arms Act, wherein

bail had been granted to the accused concerned, by the learned Principal District Sessions Judge, Thoothukudi, in CrI.M.P.No.758 of 2011, on 1.4.2011. However, a perusal of the copy of the bail order furnished to the detenu, in page No.268 of the booklet, would show that the offences involved in the said bail application were under Sections 120(B), 294(b), 341, 323, 307, 387 and 506(ii) I.P.C. and 25(1)(a) of the Arms Act. Further, the ground case had been registered against the detenu, in Crime No.34 of 2016, on the file of E-2 Peelamedu Police Station, for the offence under Sections 457, 365, 307, 395 read with Section 397, 506(ii) I.P.C. and Section 25(1)(A) of the Arms Act. Thus, a perusal of the provisions relating to the ground case and the similar case relied on by the detaining authority would show that the provisions are not similar. 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 11.04.2016, 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/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

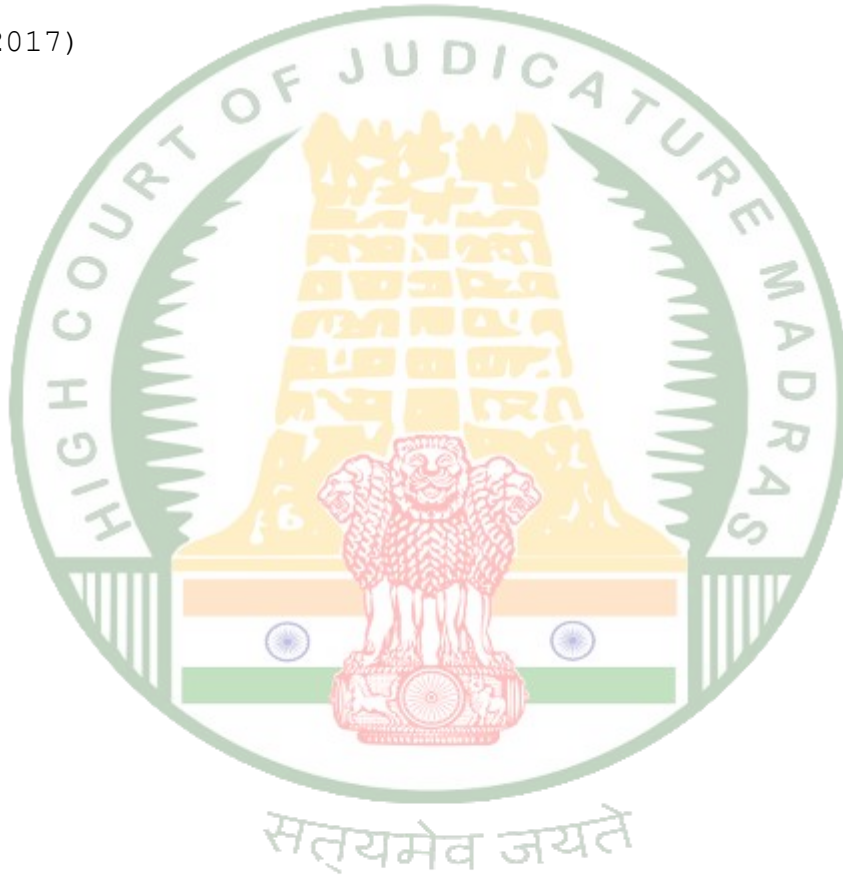
- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Coimbatore City,
Coimbatore.
- 3.The Superintendent Central Prison,
Coimbatore.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort. St. George, Chennai.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1442 of 2016

SV(CO)
VR(27/02/2017)



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