

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.1446 OF 2016

Anitha Petitioner

Vs

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

2.The District Magistrate and
District Collector,
Tiruppur District,
Tiruppur.

... 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 relating to the petitioner's brother's detention, vide detention order, dated 10.6.2016, on the file of the second respondent, made in proceedings Cr.M.P.No.05/Goonda/2016 and to quash the same as illegal and consequently to direct the respondents herein to produce the petitioner's brother, Kumaresh, son of Karuppusamy @ Durai, aged 24 years, before this Court and to set him at liberty, from detention at Central Prison, Coimbatore.

For Petitioner : Mr.C.C.Chellappan

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

ORDER

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

This Habeas Corpus Petition has been filed by the sister of the detenu, namely, Kumaresh, aged about 24 years, son of Karuppusamy @ Durai, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.05/Goonda/2016, dated 10.6.2016, 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 states that in the ground case registered in Crime No.162 of 2016, on the file of Cheyur Police Station, no bail application had been filed by the detenu. But, the detaining authority had stated that there is a real possibility of the detenu coming out on bail, in the near future. However, there are no materials available to show that a bail application is being moved, on behalf of the detenu, either by his relatives or by any other person, to take him out on bail. Thus, there is no real possibility of the detenu coming out on bail. Therefore, the conclusion of the detaining authority that there is a possibility of the detenu coming out on bail shows his non application of mind, while passing the detention order.

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. On verification of the records, it is apparent that no bail application has been filed by the detenu in the ground case, in Crime No.162 of 2016, on the file of the Cheyur Police Station. Further, no material had been produced to show that any bail application is being moved, on behalf of the detenu, either by his relatives or by any other person, to take him out on

bail. In such circumstances, the statement of the detaining authority in the detention order that there is a real possibility of the detenu coming out on bail, shows the non application of mind on the part of the detaining authority. Thus, it is clear that the detention order has been passed by the detaining authority without proper application of mind and appreciation of facts. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 10.6.2016, 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(CO)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The District Magistrate and
District Collector,
Tiruppur District,
Tiruppur.

3.The Superintendent,
Central Prison,
Coimbatore.

(In duplicate for Communication to Detenue)

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
High Court, Madras.

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