

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.1512 of 2016

Chinnakannal

...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 records relating to the petitioner's son detention, vide detention order, dated 10.6.2016, on the file of the second respondent herein, made in proceedings Cr.M.P.No.06/Goonda/2016 and quash the same as illegal and consequently, to direct the respondents herein to produce the detenu, namely, Shanmugasundaram, son of Muniyappan, aged about 19 years, before this Court and to set him at liberty, from detention at Borstal School, Pudukkottai.

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 mother of the detenu, namely, Shanmugasundaram, aged about 19 years, son

of Muniyappan, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.06/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 Borstal School, Pudukkottai, 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 the Cheyur Police Station, no bail application has been filed by the detenu. But, the detaining authority had stated, in the grounds of detention, that since in similar type of cases, bail had been granted by the Court to the accused concerned, there is a real possibility of the detenu coming out on bail. 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. Thus, there is no real possibility of the detenu coming out on bail. Therefore, the conclusion of the detaining authority that there is a real 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 clear 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 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. 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

//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,
Barstal School,
Pudukottai.
4. The State Secretary to Government
Public (Law & Order)
Fort St. George, chennai-9.
5. The Public Prosecutor,
High Court, Madras.

RSY(CO)
RS(09/02/2017)

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