

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2017

CORAM

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

H.C.P.No.1565 of 2016

S.Magesh

... 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 Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.

.... 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 cousin brother detention, vide detention order, dated 7.7.2016, on the file of the second respondent, made in proceedings BCDFGISSSV No.42/2016 and quash the same, as illegal and consequently to direct the respondents to produce the detenu, Santhar @ Chandhru, son of Kuppan, aged 30 years, before this court and to set him at liberty, from detention at Cenral Prison, Vellore.

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 cousin brother of the detenu, namely, Santhar @ Chandhru, aged about 30 years, son of Kuppan, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.42/2016, dated 7.7.2016,

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, Vellore, 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 page No.5 of the grounds of detention, it had been stated by the detaining authority that the detenu, Santhar @ Chandhru, had been arrested, in respect of Kanchi Taluk Police Station Crime No.548 of 2016 and had been remanded in custody. It had been further stated in the grounds of detention that the detenu had filed a bail petition, before the District Sessions Court-II, Kancheepuram, on 4.7.2016, in C.M.P.No.1001/2016, which had been dismissed, on 6.7.2016. However, it had been further stated by the detaining authority that there is a real possibility of the detenu coming out on bail, by filing a bail petition, before any appropriate court, at any time. However, there are no materials available to show that a fresh bail application is being moved, either by the detenu or by his relatives. 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 apparent that no further bail application had been filed by the detenu, in Crime No.548 of 2016, on the file of Kanchi Taluk Police Station, which is the ground case. Further, no material had been produced to show that further bail application is being moved, either by the detenu or 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 had 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 7.7.2016, 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(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.
3. The Superintendent,
Central Prison, Vellore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1565 of 2016

NRJK(CO)
CA(01/02/2017)