

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2017

CORAM

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

H.C.P.No.1596 of 2016

Kandiammal

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary to Government (Home)
Prohibition & Excise Department
Secretariat, Chennai - 9
2. The District Magistrate and District Collector
Thiruppur District .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing the respondents to produce the body of the petitioner's son, namely, Murugan, S/o.Arumugam, who is detained in Central Prison, Coimbatore, before this Court and set him at liberty forthwith by calling for the records pursuant to the Detention Order made in Cr.M.P.No.15/Goonda/2016 dated 09.07.2016 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.R.Nalliyappan
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, Murugan, S/o.Arumugam, aged about 53 years, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.15/Goonda/2016, dated 09/07.2016, 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 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. Even though several grounds have been raised in this Habeas Corpus Petition, the learned counsel appearing on behalf of the petitioner had submitted that the detaining authority had stated in the grounds of detention that she was aware that the detenu, namely, Murugan, S/o.Arumugam, has been remanded, in Crime No.273 of 2016, u/s.302 IPC, on the file of the Kundadam Police Station and that he has been kept in the Central Prison, Coimbatore, as a remand prisoner. The detaining authority has further stated that in the said case he had not filed any bail application in any Court. However, it has also been stated that in a similar case registered in Kundadam Police Station, in Crime No.11 of 2015, under Section 302 IPC, bail had been granted to the accused therein, by the Principal Sessions Court, Tiruppur, in Cr.M.P.No.448 of 2015, on 21.04.2015 and as bails are granted by the Courts in similar type of cases, there is a real possibility of the detenu coming out on bail by filing another bail application in the case registered against him.

4. The learned counsel appearing for the petitioner had stated that it had been admitted by the detaining authority that no bail application had been filed by the detenu in the case in Kundadam Police Station in Crime No.273 of 2016 in any Court. There are no materials placed before the detaining authority for her to arrive at the conclusion that there is a real possibility of the detenu coming out on bail by filing a fresh bail application in the ground case in Crime No.273 of 2016. While so, the statement of the detaining authority that there is a real possibility of the detenu coming out on bail has not been substantiated with sufficient materials.

5. 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.273 of 2016, on the file of the Kundadam Police Station. 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 09.07.2016, 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

gpa



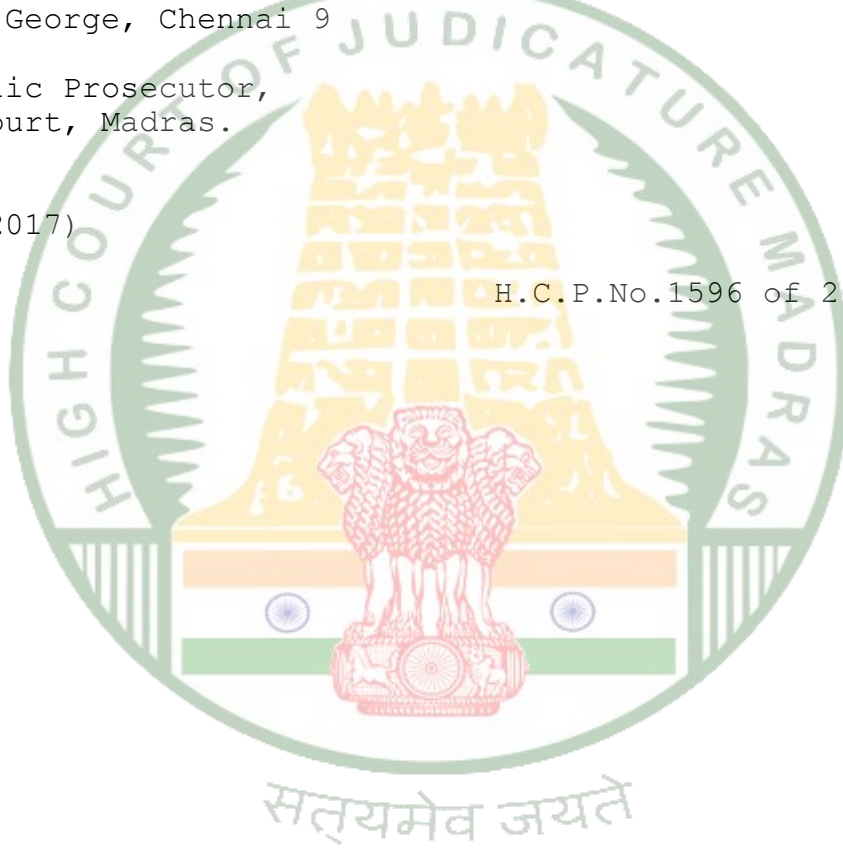
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To

- 1.The State of Tamil Nadu
rep. by its Secretary to Government (Home)
Prohibition & Excise Department
Secretariat, Chennai - 9
2. The District Magistrate and District Collector
Thiruppur District
- 3 The Superintendent, Central Prison, Coimbatore
- 4 The St. Secretary to Govt., Public (Law & Order)
Fort. St. George, Chennai 9
- 5.The Public Prosecutor,
High Court, Madras.

rsy(CO)
md(13/02/2017)

H.C.P.No.1596 of 2016



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