

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.1597 of 2016

Kandiammal .. Petitioner/ Mother of the Detenu

Vs

1. The State of Tamil Nadu,
rep by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
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 Dhandapani, 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.16/Goonda/2016 dated 11.07.2016 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.V.M.R.Rajentran, APP

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, Dhandapani, S/o.Arumugam, aged 48 years, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.16/Goonda/2016, dated 11.07.2016, 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 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, has assailed the impugned detention order mainly on the ground that in the grounds of detention, the detaining authority had stated, in paragraph 5 of the Detention Order, that the detenu is in remand in Kundadam Police Station in Crime No.273 of 2016 and that he had filed a bail petition before the District Sessions Court, Tiruppur, in Cr.M.P.No.599 of 2016 dated 03.06.2016 and the same had been dismissed on 06.06.2016. It had been further stated by the detaining authority that in a similar case registered in Kundadam Police Station in Crime No.11 of 2015, bail had been granted to one Palanisamy, by the Principal Sessions Court, Thiruppur in Cr.M.P.No.448 of 2015 on 21.04.2015 and hence there is a real possibility of the detenu coming out on bail by filing another bail petition. However, in the grounds of detention, the detaining authority had not stated anything about the steps taken on behalf of the detenu to come out on bail by filing a bail application in the said case. Therefore, the finding of the detaining authority that there was an imminent possibility of the detenu coming out on bail is without any material on record, which shows the non application of mind on the part of the detaining authority, 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 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 11.07.2016, 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.

s/d-
Assistant Registrar (CO)

//True Copy//

Sub-Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Magistrate and District Collector
Thiruppur District
3. The Superintendent, Central Prison, Coimbatore
(In duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public (Law & Order), Fort. St. George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No. 1597 of 2016

PK (CO)
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