

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM

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

H.C.P.No.1605 of 2016

Parameshwari

.. Petitioner

Vs

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

2.The Commissioner of Police,
Chennai City Police,
Commissioner Office, Egmore,
Chennai-600 008.

.. 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 impugned order in BCDFGISSSV No.766/2016, dated 25.7.2016, on the file of the second respondent herein and to set aside the same, as illegal and to direct the respondents to produce the detenu Ravi, son of Chinnathambi, aged about 42 years, now confined in the Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.S.Senthilvel
for M/s.Ilayaraja Kandasamy

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 wife of the detenu, namely, Ravi, aged about 42 years, son of Chinnathambi, to issue a Writ of Habeas Corpus, to call for the records, in No.766/BCDFGISSSV/2016, dated 25.7.2016, 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, Puzhal, Chennai, 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 had pointed out that it had been stated by the detaining authority, in paragraph 4 of the grounds of detention, that the detenu, namely, Ravi, is in remand, in J-4 Kotturpuram Police Station Crime Nos.1011/2016 and 1015/2016 and that, he had moved a bail application, before the Principal Sessions Court, Chennai, in Crl.M.P.No.11081 of 2016, relating to J-4 Kotturpuram Police Station Crime No.1015/2016, which had been dismissed, on 14.7.2016. It had been further stated that the detenu had moved a bail application, before the High Court of Madras, at Chennai, in Crl.O.P.No.15465 of 2016, relating to Crime No.1015/2016, on the file of J-4 Kotturpuram Police Station and the same is pending. It had been further pointed out that the Detaining Authority had stated in the grounds of detention that in a similar case registered, in E-1 Mylapore Police Station Crime No.1037/2015, under Sections 341, 294(b), 324, 336, 427, 397, 307 and 506(ii) of the Indian Penal Code, bail had been granted, by the Court of Principal Sessions Judge, Chennai, in Crl.M.P.No.5358 of 2015. It had been pointed out by the learned counsel appearing on behalf of the petitioner that the detenu had filed a bail application before the High Court of Madras. However, the detaining authority had relied on the bail granted by the lower court, in the similar case. This shows the non application of mind on the part of the detaining authority. 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 clear that the detenu had moved a bail application, before the High Court of Madras, in Crl.O.P.No.15465 of 2016, relating to Crime

No.1015/2016, on the file of J-4 Kotturpuram Police Station, which is pending. However, the detaining authority had stated, in the grounds of detention, that in a similar case registered, in E-1 Mylapore Police Station Crime No.1037 of 2015, bail had been granted by the Court of Principal Sessions Judge, Chennai, in Crl.M.P.No.5358 of 2015. When the detenu had filed a bail application, before the High Court of Madras, relying on the similar case, wherein bail had been granted by the lower court, 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 25.7.2016, 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/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Chennai City Police,
Commissioner Office, Egmore,
Chennai-600 008.
- 3.The Superintendent, Central prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Govt.,
Public (L&O) Fort St.george, chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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