

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P.No. 1615 of 2016

Kumuda .. Petitioner

Vs.

1.The Government of Tamil Nadu
Secretary, Home, Prohibition and Excise Department
Secretariat, Fort St. George
Chennai - 600 009

2. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai - 600 007 .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the detaining authority to produce the detainee, the petitioner's son Alex Miloni@Nirmal, s/o.Premraj aged about 25 years resident of Door No.11/99, Plot No.115, Chozhan Street, Panchatcharam Nagar, Chinna Panichery, Baraniputhur, Mangadu, Chennai- 600 122 has been detained under Act 14 of 1982 after having been declared as "Goonda" by order of the 2nd respondent's detention order dated 04.07.2016 and presently confined at the Central Prison, Puzhal as TPDA-8158 under the preventive detention in BCDFGISSSV No.641/2016, to quash the detention order and to set the detenu at liberty.

For Petitioner : Mr.G.Kuppusamy
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, Alex Miloni @ Nirmal, aged 25 years, S/o.Premraj, to issue a Writ of Habeas Corpus, to call for the records, in Detention Order No.641/BCDFGISSSV/2016, dated 04.07.2016, passed by the second respondent herein, detaining the detenu, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda", in the Central Prison, Coimbatore and to quash the same and to direct the respondents to produce the body and person of the detenu and to set him at liberty.

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 the learned counsel for the petitioner had raised many grounds in assailing the impugned order of detention in the petition, he had confined his arguments only to the ground that the detaining authority had stated, in Paragraph 4 of the grounds of detention, that he is aware that the detenu Alex Miloni @ Nirmal, is in remand, in T-4, Maduravoyal Police Station, in Crime Nos.701/2015, 926/2015 and 512/2016 and that the detenu had not moved any bail application in the above said cases. However, the sponsoring authority had stated that the relatives of the detenu are taking action to take him out on bail, in Crime Nos.701/2015, 926/2015 and 512/2016, on the file T-4, Maduravoyal Police Station, by filing bail applications before the appropriate Court. It has also been stated that in a case registered at K-9, Thiru.Vi.Ka.Nagar Police Station, in Crime No.738 of 2015, under Sections 341, 294(b), 336, 427, 307 and 506(ii) IPC, bail had been granted, by the Court of Principal Sessions, Chennai, in CrI.M.P.No.16625 of 2015 and hence, there is a real possibility of the detenu coming out on bail in the case registered in T-4, Maduravoyal Police Station. However, in the statement given by one Muthu, the father-in-law of the detenu, it had been stated that steps are being taken to take the detenu out on bail, only in Crime No.512/2016, on the file of T-4, Maduravoyal Police Station. Nothing has been stated with regard to the filing of bail application, in Crime Nos.701 of 2015 and 926 of 2015. Hence, 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. Thus, it is a clear case of non application of mind on the part of the detaining authority in passing the order of detention.

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 bail application has been filed by the detenu in Crime Nos.701 of 2015 and 926 of 2015, on the file of the T-4, Maduravoyal 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 in Crime Nos.701 of 2015 and 926 of 2015, 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 04.07.2016, 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

To

1.The Secretary to Government,
Home Prohibition & Excise Department,
Secretariat,
Chennai - 600 009

2.The Commissioner of Police,
Greater Chennai Police
Office of the Commissioner of Police,
Vepery, Chennai.

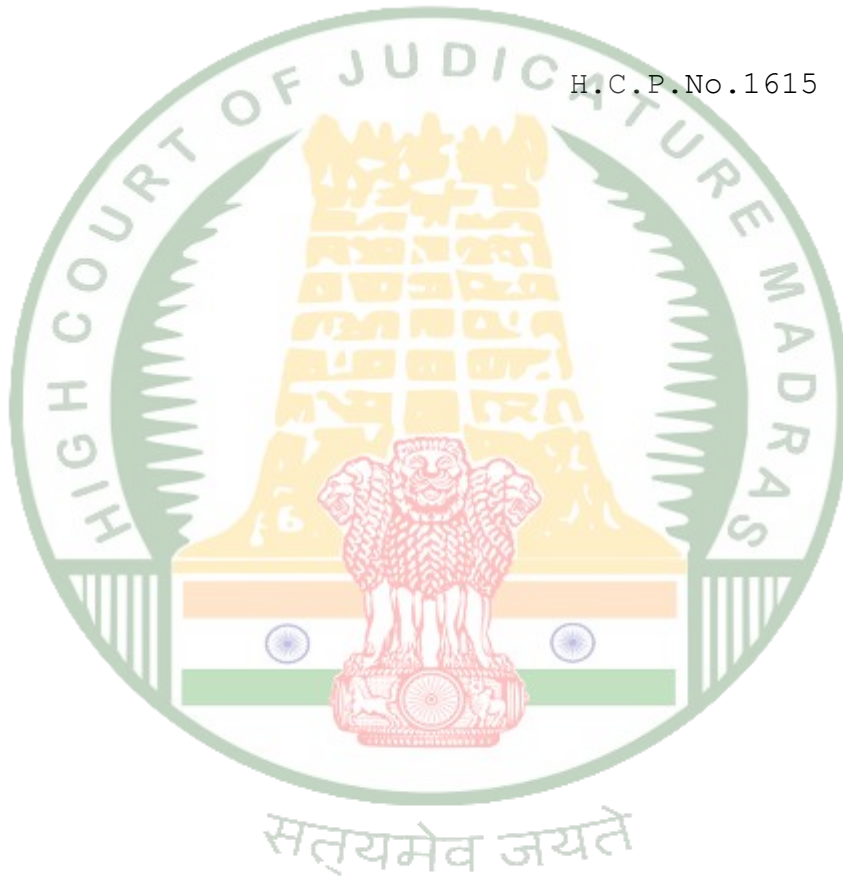
3 The Superintendent, Central Prison,
Puzhal, Chennai 66

4 The Joint Secretary to Government
Public (Law & Order), Fort St. George, Chennai 9

5 The Public Prosecutor
High Court, Madras.

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md(17/02/2017)

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