

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

and

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P.No.1620 of 2016

Malathy

Petitioner

Vs

- 1.The State of Tamil nadu,
rep by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
 - 2.The District Magistrate and
District Collector,
Tiruppur District.
- .. 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 detention order, in Cr.M.P.No.20/Goonda/2016, dated 13.7.2016, passed by the second respondent, and quash the same and to produce the detenu, Aruchamy, son of Chellappa Gounder, aged about 50 years, confined in the Central Prison, Coimbatore, before this court and to set him at liberty.

For Petitioner : Mr.C.Ramkumar

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, Aruchamy, aged about 50 years, son of Chellappagounder, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.20/Goonda/2016, dated 13.7.2016, 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, 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. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel appearing on behalf of the petitioner states that, in paragraph 5 of the grounds of detention, the detaining authority had stated that the detenu, Aruchamay, is in remand, in the ground case, in Crime No.199 of 2016, on the file of Kamanaickenpalayam Police Station and that he had moved a bail petition, before the Principal Sessions Court, Tiruppur, in Cr.M.P.No.589/2016, which had been dismissed, on 4.6.2016. Again, he had moved another bail petition, before the High Court, Madras, in Crl.O.P.No.12836 of 2016, which had also been dismissed, on 20.6.2016. It had been further stated, in the grounds of detention, that there is a real possibility of the detenu coming out on bail, by filing another bail petition, before this court or in any other appropriate court, in future, as in a similar case, registered in Coimbatore City B2 R.S.Puram Police Station Crime No.681/2015, bail had been granted to the accused concerned, by the Principal Sessions Court, Coimbatore, in Crl.M.P.No.3298 of 2015, on 4.12.2015. However, there are no materials available to show that a bail application is being moved, on behalf of the detenu, either by his relatives or by any other person. 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 clear that no further bail application has been filed by the detenu, in the ground case, in Crime No.199 of 2016, on the file of Kamanaickenpalayam Police Station. Further, no material had been produced to show that any bail application is being moved, on behalf of the detenu, either 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 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 13.7.2016, 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

//True Copy//

Sub Assistant Registrar

vvk

To

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

ks (CO)
md(10/02/2017)

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