

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.1634 of 2016

Bhavani .. Petitioner
Vs

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

2.The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.

... 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 in connection with the order of detention passed by the second respondent, dated 22.7.2016, in Memo No.47/BCDFGISSSV/2016, against the son of the petitioner, Ramesh, aged 33 years, son of Osooran, confined in the Central Prison, Vellore and to set aside the same and consequently, to direct the respondents to produce the detenu, before this Court and to set him at liberty.

For Petitioner : Mr.A.Saranraj

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, Ramesh, aged about 33 years, son of Osuran, to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV No.47/2016, dated 22.7.2016, 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, Vellore, and to quash the same and to direct the Respondents to produce the body 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. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel appearing on behalf of the petitioner, has contended that the detaining authority had stated, in paragraph 5 of the grounds of detention, that he is aware that the detenu, namely, Ramesh, had been arrested, in the ground case, in Crime No.545 of 2016, in Sivakanchi Police Station, on 2.7.2016, and had been produced before the Judicial Magistrate Court-I, Kancheepuram, on the same day and ordered to be remanded upto 14.7.2016 and had been lodged in the Central Prison, Vellore. It had been further stated that he had not moved any bail application, so far, in the said case. However, the detaining authority had further stated that the wife of the detenu had stated, in her statement, dated 4.7.2016, given under Section 161(iii) Cr.P.C., before the Inspector of Police, B1 Sivakanchi Police Station, that due to lack of money, they could not move a bail application, before the appropriate court, but they are trying to get bail, in Crime No.545 of 2016. The learned counsel appearing on behalf of the petitioner had further stated that the detaining authority had failed to mention the facts relating to the first and the second adverse cases, namely, Crime No.1353 of 2015 and 2 of 2016, on the file of Sivakanchi Police Station and nothing had been stated about the said adverse cases. According to the petitioner, the non consideration of the adverse cases, by the detaining authority, shows his lack of 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. It is noted from the records available that the Detaining Authority, while passing the detention order, had considered the ground case registered, in Crime No.545 of 2016, on the file of Sivakanchi Police Station. However, on a perusal

of the detention order, it is clear that the first and the second adverse cases, namely, Crime Nos.1353/2015 and 2/2016, on the file of Sivakanchi Police Station, wherein the detenu had been arrested, were not considered by the Detaining Authority, while passing the order of detention. In such circumstances, the non consideration of the adverse cases, by the Detaining Authority, in the order of detention, has caused prejudice to the detenu. This shows the non application of mind on the part of the detaining authority, while passing the detention order. Therefore, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 22.7.2016, 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 Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent, Central Prison,
Vellore.
- 5.The Joint Secretary to Government Public(L&O)
Fort St.George, Chennai-9.

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MP (CO)
GN(13/02/2017)