

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM

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

H.C.P.No.1661 of 2016

Devi

... Petitioner/Mother of
Detenu

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The Commissioner of Police,
Chennai Police,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records, in connection with the order of detention passed by the second respondent, dated 11.7.2016, in BCDFGISSSV No.671/2016, against the son of the petitioner, detenu, Sarathkumar, aged 23 years, son of Sivakumar, detained in the Central Prison, Puzhal, Chennai 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.K.Dakshinamurthi

For Respondents : Mr.V.M.R.Rajentran,
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, Sarathkumar, aged about 23 years, son of Sivakumar, to issue a Writ of Habeas Corpus, to call for the records, in No.671/BCDFGISSSV/2016, dated 11.7.2016, 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, has assailed the impugned detention order mainly on the ground that the detaining authority had stated, in paragraph No.4 of the grounds of detention, that the detenu, Saratkumar, is in remand, in V-3 J.J.Nagar Police Station Crime Nos.187 of 2016 and 418 of 2016, which are the first adverse case and the ground case, respectively, and that he had moved a bail application, for Crime No.418 of 2016, before the Court of Principal Sessions Judge, Tiruvallur, in Crl.M.P.No.2256 of 2016, which is pending. It had been further stated, in the grounds of detention, that the detenu had not moved any bail application, for Crime No.187 of 2016, so far. The detaining authority had further stated, in the grounds of detention, that the relatives of the detenu are taking steps to take him out on bail, by filing a bail application, in Crime No.187 of 2016, before the appropriate court. However, it had been pointed out by the learned counsel appearing on behalf of the petitioner that no statements had been recorded from the relatives of the detenu with regard to the claim that they are taking steps to move a bail application, on behalf of the detenu, in the above said case and no such statements had been furnished to the detenu.

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 no statements had been recorded from the relatives concerned to substantiate the claim that they are taking steps to move a bail application on behalf of the detenu, to take him out on bail, in Crime No.187 of 2016, on the file of V-3 J.J, Nagar Police Station, which is the first adverse case. In such circumstances, we find that there is non application of mind on the part of the detaining authority, in 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 11.7.2016, 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(CS IV)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,
Chennai Police,
Chennai.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
(In duplicate for Communication to Detenu)
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1661 of 2016

PK(CO)
CA(22/02/2017)

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