

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.1680 of 2016

Saraswathi .. Petitioner/Mother of
Detenu

Vs

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

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus or any other Writ or order in the nature of Writ call for the records in connection with the order of Detention passed by the second respondent dated 26.07.2016 in Memo No.781/BCDFGISSSV/2016 against the petitioner's son Karthikeyan @ Karthi, male, aged about 24 years, S/o Murugesan, who is confined at Central Prison, Puzhal II, Chennai, and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.V.M.R. Rajentren
Additional Public Prosecutor

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O R D E R

(The order of the Court was made by S.NAGAMUTHU.,J)

The petitioner is the mother of one Mr.Karthikeyan @ Karthi, aged 24 years s/o Murugesan. The second respondent by order in Memo No.781/BCDFGISSSV/2016 dated 26.07.2016, has ordered to be detained the petitioner's son under Section 3 of the Tamil Nadu Act 14 of 1982 branding him as "Goonda", for a period of one year. Challenging the same, the petitioner has come up with this

Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and we have also perused the records carefully.

3.Though, several grounds have been raised by the learned counsel for the petitioner in this Habeas Corpus Petition, he would mainly contend that there has occurred a delay of 30 days in considering the representation made by the petitioner and which has caused serious prejudice to the detenu and the same would violate Article 21 of the Constitution of India.

4.The learned Additional Public Prosecutor appearing for the State would submit that in fact, there had occurred 30 days of delay in considering the representation of the petitioner. But according to him, the delay has been explained by the Government.

5.But, we find no such explanation at all worth considering. We brought to the notice of the learned Additional Public Prosecutor that this is not the only case but, in most of the cases which had come up before us, we have noticed that unnecessary delay has been caused in considering the representation made on behalf of the detenus, though, repeatedly, the Hon'ble Supreme Court and this Court have imposing directions to the authorities concerned to dispose of such representations, without any delay.

6.The learned Additional Public Prosecutor appearing for the State would submit that now, the Secretary to Government, Home Department, has issued Circular to all the authorities concerned, to avoid any such delay in future and has also further warned them that if any delay occurs at any level in the matter of considering the representation, appropriate action will be taken against the Officer who is in-charge.

7.In fact, the Deputy Secretary to Government, Home Prohibition and Excise Department, Secretariat, Chennai has filed an affidavit also to that effect. We record the same. As we have found that there is inordinate delay of 30 days in considering the representation of the petitioner and the same has not been explained away, we find no option but to quash the detention order passed against the detenu, on this ground alone.

8.The learned counsel for the petitioner would also brought to our notice that the detenu had not filed any bail application seeking bail before any Court, in the ground case. When that be so, according to the learned counsel for the petitioner, the detaining authority has arrived at the subjective conclusion that there was real possibility of detenu coming out on bail in

the ground case. Based on no material and on mere surmise, the detaining authority has come to such a conclusion. We find some force in the said argument also.

9.A perusal of the detention order would go to show that admittedly, the detenu had not moved any bail application before any Court, in respect of the ground case. When that be so, it is surprising as to how the detaining authority has come to the conclusion that there is a possibility of detenu coming out on bail in the ground case and may indulge in similar activities which would be detrimental to the public order. On this ground also, the detention order is liable to be quashed.

10.In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent in Memo No.781/BCDFGISSSV/2016 dated 26.07.2016 is quashed. The detenu is set at liberty forthwith unless his presence is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St., George, Chennai - 9.
2. The Commissioner of Police,
Chennai Police,
Vepery, Chennai - 7.
3. The Superintendent
Central Prison, Puzhal, Chennai
4. The Joint Secretary to Government
Public(law & Order)
Fort. St. George
Chennai 9
5. The Public Prosecutor,
High Court, Chennai.

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