

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.1693 of 2016

Sankar .. Petitioner/Detenu

versus

- 1.Executive Magistrate cum
District Collector,
Tiruppur District, Tiruppur.
- 2.Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in CrI.M.P.No.4/Goonda/2016 dated 09.06.2016 on the file of the respondent-1, Executive Magistrate cum District Collector, Tiruppur District and to bring to this Court the detenu Sankar, son of Ganesan residing at Fire Station Last Street, Palladam, Tiruppur District, now languishing at Central Prison, Coimbatore and to quash the above said order passed by the respondent No.1 and to set the petitioner at liberty.

For Petitioner : Mr.S.Rajeswaran

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

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O R D E R

[Order of the Court was made by S.NAGAMUTHU,J.]

This Habeas Corpus Petition has been filed by the detenu to issue a Writ of Habeas Corpus, to call for the records connected with the detention order of the first respondent, in CrI.M.P.No.4/Goonda/2016, dated 09.06.2016, detaining the detenu, namely, Sankar, aged about 37 years, S/o Ganesan, 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" as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982, and to quash the same and to produce the detenu before this Court and set him at liberty.

2. We have heard the learned counsel appearing on behalf of the petitioner and 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, Mr.S.Rajeswaran, the learned counsel appearing on behalf of the petitioner, had assailed the impugned detention order mainly on the ground that the detaining authority had stated, in Paragraph No.5 of the order of detention, that the detenu has not moved any no bail application in Palladam Police Station Crime No.211 of 2016. However, in the detention order, it had been stated that in similar case in Crl.M.P.No.1593/2016 bail was granted to one Ranjithkumar by the Judicial Magistrate, Palladam. Therefore, based on that, the detaining authority arrived at subjective satisfaction and inferred that there is real possibility of the detenu coming out on bail by filing a bail petition before the appropriate Court and if he comes out on bail he will indulge in such further activities, which are prejudicial to the maintenance of public order and public peace.

4. It is clear that the detenu has not filed any bail application in Palladam Police Station Crime No.211 of 2016, as on the date of passing of the detention order. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that when no bail application is filed or pending, then it is only a logical conclusion that there is no real likelihood of the person in custody would be released on bail and hence, the inference that there is a real possibility of the detenu coming out on bail in similar case is only a total non-application of mind. Further, the detaining authority has placed reliance on similar case wherein bail was granted by the Court concerned; but he has not stated whether the accused in the said similar cases is / are the co-accused of the detenu. In such view of the matter, the detention order is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 09.06.2016, passed by the first respondent is quashed. The detenu is directed to be released, forthwith, unless, his presence is required in connection with any other case.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

sri

To

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

+1cc to Mr.S.Rajeswaran,Advocate sr.16448

H.C.P.No.1693 of 2016

br(co)
ss(10/4/2017)

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