

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P No.1772 of 2016

R.Krishnaveni

... Petitioner

vs

1.The State of Tamil Nadu,
Rep. By its Secretary to Govt.
Department of Home,
Prohibition and Excise
Fort st. George
Chennai - 600 009.

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

...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the detaining authority to produce the detinue, the petitioner's son Naga @ Nagaraj, son of Rajabathar, aged about 33 years residing at No.46, Vasanth Nagar, Thaiyar, Thiruporur Taluk, Kancheepuram District presently confined at Central Prison, Puzhal, calling for the records relating to the preventive detention order dated 15.07.2016 in Memo.No. BCDFGISSSV No.44/2016 and quash the same and set the detinue at liberty.

For Petitioner : Mr.N.Anand Venkatesh,

For Respondent : Mr.V.M.R. Rajentren,

Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the mother of the detenu to issue a Writ of Habeas Corpus, to call for the records connected with the detention order of the second respondent, in Memo BCDFGISSSV No.44/2016 dated 15.07.2016, detaining the detenu, namely, Naga @ Nagaraj, aged about 33 years, S/o Late Raja Bathar, 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.N.Anand Venkatesh, 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 no bail application has been moved on behalf of the detenu, in respect of ground case. However, in the detention order, it had been stated that in similar case in Crime No.19/2015 bail was granted to one Suresh by the Principal District Sessions Court, Chengalpattu. 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 since, in a similar case bail was granted by the Court after a lapse of time 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 or the relatives of the detenu have not filed any bail application in ground case, 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 type of cases 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 15.07.2016, passed by the second respondent is quashed. 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

To

1. The State of Tamil Nadu,
Rep. By its Secretary to Govt.
Department of Home,
Prohibition and Excise
Fort st. George
Chennai - 600 009.
2. The District Collector and District Magistrate
Kancheepuram,
Kancheepuram District.
3. The Public Prosecutor,
High Court, Chennai.
4. The Superintendent Central
Prison Puzhal Chennai.

5. The Joint Secretary to Govt.,
Public Law & Order
Fort St George Chennai
H.C.P.No.1772 of 2016

HCP.No.1772 of 2016

MG(CO)

RRI 12/04/2017



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