

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.1779 of 2016

Jayalakshmi .. Petitioner/Wife of the
detenue

Vs

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government (Home)
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
(Full Additional Charge) of
Cuddalore District at
Cuddalore.
- .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus direction in the nature of a writ, calling for the entire records relating to the impugned Order of Detention passed by the 2nd respondent in C3/D.O/12/2016 dated 06.07.16 and set aside the same and consequently direct the respondents to produce the detenu Kandan @ Kandasamy, S/o. Subramani, aged about 34 years, Petitioner's husband now confined at Central Prison, Cuddalore, before this Court.

For Petitioner : Mr.S.Saravanakumar

For Respondents : 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 wife 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 C3/D.O/12/2016 dated 06.07.2016 and set aside the same and consequently direct the respondents to produce the detenu Kandan @ Kandasamy, S/o. Subramani, aged about 34 years, Petitioner's husband now confined at Central Prison, Cuddalore, 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. Saravanakumar, 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 connection with Veppur Police Station Crime Nos.146 & 147 of 2016 under Sections 147, 341, 302 @ 341, 397 & 302 I.P.C. However, in the detention order, it had been stated that in similar case in Veppur Police Station in Crime No.104 of 2016 under Sections 147, 148, 341, 506(ii), 307 & 302 I.P.C., bail was granted to one Ms. Dhanalakshmi and Suriyagandhi, by this Court on 26.06.2016 in CrI.O.P.No.11074/2016. Based on that, the detaining authority has arrived at subjective satisfaction and inferred that there is real possibility of the detenu coming out on bail in similar type of cases 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 has not filed any bail application in in Veppur Police Station Cr.No.147/2016, 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 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 case 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 06.07.2016, 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm/stm
To

- 1.The Secretary to Government (Home)
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
(Full Additional Charge) of
Cuddalore District at
Cuddalore.
3. The Superintendent
Central Prison, Cuddalore
- 4.The Joint Secretary to Government
Public Law and order
Fort St.George Chennai-9
- 5.The Public Prosecutor
High Court Madras

+1 cc to Mr.S.Saravanakumar Advocate sr 16368

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