

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.1793 of 2016

Sathish

....Petitioner

Vs

1. State of Tamil Nadu

Rep by its The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009

2. The Commissioner of Police,
O/o. Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.

....Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ, order or Direction in the nature of a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 08.08.2016 in BDFGISSVV.No.854/2016 against the petitioner's friend, detenu Kukka @ Nagabooshanarao, S/o Nageswararao, aged about 49 years, now confined at Central Prison, Puzhal, Chennai and and set him at liberty.

For Petitioner : Mr.A. Niraml Kumar

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

Additional Public Prosecutor

ORDER

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

The petitioner, who is the friend of the detenu Kukka @ Nagabooshanarao, S/o Nageswararao, aged about 49 years has come

up with this Habeas Corpus Petition, challenging the detention order passed against Kukka @ Nagabooshanarao, by the second respondent, vide proceedings Memo No.BDFGISSVV.No.854/2016, dated 08.08.2016.

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

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that though bail application was filed in CrI M.P.Nos.12679 and 12681/2016 before the Principal Sessions Judge, Chennai in respect of Crime Nos.1803/2016 and 1120/2016 on the file of R-7 K.K. Nagar Police Station and the same are pending, there was no further bail application pending as on the date of passing of the detention order by the second respondent in Crime No.1119/2016 and the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which case there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

4. The learned Additional Public prosecutor would submit that in the Special report submitted by the Inspector of Police, there is a statement to the effect that the relatives of the detenu were taking steps to file bail application seeking bail in connection with the case in Crime No.1119/2016.

5. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in Crime No.1119/2016 on the file of R-7 K.K. Nagar Police Station. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority, except the report of the Inspector of Police. Even the report of the Inspector of Police does not spell out as to how he came to know that the relatives were taking steps to file application seeking bail. Full details as to who are those relatives, who were taking steps to file bail application also have not been mentioned. Thus, in our considered view, without making proper application of mind relating to these facts, the detaining authority has passed the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 08.08.2016, 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 V)

//True Copy//

Sub Assistant Registrar

jbm/rkp

To

1. The Secretary to the Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai - 600 009
2. The Commissioner of Police,
O/o. Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
3. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George,
Chennai-9.
4. The Superintendent,
Central prison, Puzhal,
Chennai.
5. The Public Prosecutor,
High Court, Chennai.

rk(co)
rmp(11/05/17)

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