

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.1826 of 2016

Thangaraj .. Petitioner

versus

1.The State of Tamil Nadu,
Represented by its Secretary
to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and
District Magistrate,
Coimbatore District,
Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records of the detention made in Cr.M.P.No.15/G/2016/E1 dated 11.06.2016 passed by the District Collector and District Magistrate, Coimbatore District, Coimbatore, the second respondent herein and set aside the same and direct the respondents to produce the detainee Thangaraj, son of Pandi, aged 24 years, now confined in Central Prison, Coimbatore before this Court and set the detainee Thangaraj at liberty.

For Petitioner : M/s.Daniel Mary

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

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 second respondent, in

Cr.M.P.No.15/G/2016/E1, dated 11.06.2016, detaining the detenu, namely, Thangaraj, aged about 24 years, S/o Pandi, 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 set aside 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, Ms.Daniel Mary, 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 Kottur Police Station Crime Nos.34 and 99 of 2016. However, in the detention order, it had been stated that in similar case in Crime No.121/2016 under Sections 392, 506(ii) IPC bail was granted to one Kutti @ Thushyanth by the learned Principal District Sessions Judge, Coimbatore. 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 peace.

4. It is clear that the detenu has not filed any bail application in Kottur Police Station Crime Nos.34 and 99 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 11.06.2016, 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

H.C.P.No.1826 of 2016

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