IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

and

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.1951 of 2016

Allimuthu @ Kumar .. Petitioner

versus

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The District Magistrate &
The District Collector,
Tiruppur District. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records relating to the proceedings of the second respondent herein in Cr.M.P.No.13/Goonda/2016 T.P.D.A.dated 12.06.2016 and quash the same and produce the detenu Allimuthu @ Kumar, son of Kandasamy, TPDA No.744/2016, now detained in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.K.Ramesh
For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecuto

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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 second respondent, in Cr.M.P.No.13/Goonda/2016 T.P.D.A.No.744 of 2016 dated 12.06.2016, detaining the detenu, namely, Allimuthu @ Kumar, aged about 30 years, S/o Kandasamy, under Section 3(1) of the

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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.K.Ramesh, 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.3(iv) of the order of detention, that no bail application has been moved on behalf of the detenu, in Kangayam Police Station Crime Nos.129 of 2016 and 99 of 2016; and Vellakovil Police Station Crime No.746 of 2015. However, in the detention order, it had been stated that in similar case in Crime No.56 of 2015 under Section 392 IPC bail was granted to one Nagamani by the Judicial Magistrate, Kangayam. 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 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 Kangayam Police Station Crime Nos.129 of 2016 and 99 of 2016; and Vellakovil Police Station Crime No.746 of 2015, 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.

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5. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 12.06.2016, 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(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Fort St.George, Secretariat,
   Chennai - 600 009.

2. The District Magistrate &
   The District Collector,
   Tiruppur District.

3. The Superintendent, Central Prison
   Coimbatore

4. The Joint Secretary to Government
   Public (Law & Order)
   Fort. St. George, Chennai 9

5. The Additional Public Prosecutor
   High Court, Madras.

+1 CC to Mr. M.K. Ramesh, sr 16390

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