

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

and

THE HON'BLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.2001 of 2016

Rayapillai ... Petitioner/uncle of the detenu
versus

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

2.The District Magistrate and
District Collector,
Salem 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 Detention Order C.M.P No.22/B.L.A./C2/2016 dated 22.08.2016 and quash the same and produce the detenu Prabu S/o Mr.Raja, male, aged about 28 years, now detained in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.D.Veerasekaran
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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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 Uncle 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 C.M.P.No.22/B.L.A./C2/2016 dated 22.08.2016, detaining the detenu, namely, Prabu, aged about 28 years, S/o Mr.Raja, 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.D.Veerasekaran, 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.4 of the detention order that the detenu has filed a bail application before the District and Sessions Judge, Salem in C.M.P.No.2482/2016 for the Crime No.246/2016 was dismissed on 27.07.2016. Further, in similar case in Attur P.E.W Crime No.650/2014, bail was granted by this Court in Crl.O.P.Np.2252/2015 dated 30.01.2015. 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 bail application filed by the detenu in C.M.P.No.2482/2016 for the Crime No.246/2016 was dismissed by the learned District and Sessions Judge, Salem, on 27.07.2016 and as on the date of passing of detention order, the detenu has not filed any bail application in Crime No.246/2016. 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 22.08.2016, 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

jbm/jer
To

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

nmi (CO)
md(12/04/2017)

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