

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.2003 of 2016

Jalajaramani ..Petitioner/Wife of the detenue

versus

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government Home,
Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The State rep. By
The Commissioner of Police,
Greater Chennai,
Veppery,
Chennai - 600 007. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records and quash the same leading to the detention of the petitioner's husband namely Bernatnathan @ Anbu son of Arokiyanathan @ Bobby aged 37 years, detained under Act 14/82 vide detention order dated 02.08.2016 on the file of the second respondent made in BCDFGISSV No.819/2016 and consequently direct the respondent herein to produce the body and person of the detenu before this Court and thereafter set him at liberty from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.L.Vinoth Kumar
For Respondents : Mr.V.M.R.Rajentren,
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 wife of the petitioner to issue a Writ of Habeas Corpus, to call for the

records connected with the detention order of the second respondent, in BCDFGISSSV No.819/2016 dated 02.08.2016, detaining the detenu, Bernatnathan @ Anbu son of Arokiyanathan @ Bobby aged 37 years, 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.L.Vinothkumar, 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 order of detention, that no bail application has been moved on behalf of the detenu, in R-10 M.G.R Nagar Police Station Crime Nos.830, 903 & 904/2016. However, in the detention order, it had been stated that in similar case in R-4 Soundarapandiyanar Angadi Police Station Crime No.1987/2014, bail was granted by the learned XVII Metropolitan Magistrate, Saidapet, Chennai. 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 R-10 M.G.R Nagar Police Station Crime Nos.830, 903 & 904/2016, 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 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 02.08.2016, 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. Secretary to Government
Home Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Veppery,
Chennai - 600 007.
- 3 The Superintendent,
Central Prison, Puzhal, Chennai.
- 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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