

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.2010 of 2016

G.Shanthi

Petitioner

vs

1.The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2.Commissioner of Police,
Greater Chennai Police.

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 11.08.2016 in Memo No.890/BCDFGISSSV/2016 against the petitioner son Dinesh @ Ottai Dinesh, male aged 29 years s/o Gnanasekar who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

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

Additional Public Prosecutor

WEB COPY
O R D E R

[Order of the Court was made by S.NAGAMUTHU, J.]

This Habeas Corpus Petition has been filed by the mother of the detenu to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 11.08.2016 in Memo No.890/BCDFGISSSV/2016 against her son Dinesh @ Ottai Dinesh,

male aged 29 years s/o Gunasekar who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents 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.S.Senthilvel, 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 K.3 Aminjikarai Police Station Crime Nos.331 & 460/2016 and in G.7 Chetpet Police Station Cr.No.659/2016. It is further stated that in K.6 TP Chatram Police Station Cr.No.663/2015 bail was granted. However, in the detention order, it had been stated that in similar cases bails were granted by the Courts after a lapse of time. Therefore, based on that, the detaining authority has arrived at a subjective satisfaction and inferred that there is a 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 detenu has not filed any bail applications in in K.3 Aminjikarai Police Station Crime Nos.331 & 460/2016 and in G.7 Chetpet Police Station Cr.No.659/2016, 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. Further, the similar case particulars have not been furnished by the Detaining authority in the detention order. 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 11.08.2016, 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.
2. Commissioner of Police,
Greater Chennai Police.
3. The Superintendent, Central Prison, Puzhal, Chennai
4. The Joint Secretary to Government
Public (law and order),
Fort. St. George, Chennai 9
5. The Public Prosecutor
High Court, Madras.

सत्यमेव जयते H.C.P.No.2010 of 2016

VSN(CO)
sp/12/4

WEB COPY