

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.2033 of 2016

Mohammed Asif

.. Petitioner

versus

- 1.The Principal Secretary to Government of Tamil Nadu,
Home, (Prohibition and Excise (XVI) Department),
Fort St.George, Secretariat,
Chennai - 600 009.
 - 2.The Commissioner of Police,
Greater Chennai,
Chennai.
 - 3.The Inspector of Police,
Central Crime Branch - I
Video Piracy Cell
Team X Greater Chennai,
Egmore.
 - 4.The Superintendent,
Central Prison,
Puzhal,
Chennai - 600 066.
- .. 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 BCDFGISSSV No.776/2016 dated 25.07.2016 and quash the same and produce the detenu Mohammed Asif S/o Malik, male, aged about 29 years, now detained in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner	: Mr.Rajkumar Paul
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 BCDFGISSSV No.776/2016 dated 25.07.2016, detaining the detenu, namely, Mohammed Asif, aged about 29 years, S/o Mr.Malik, 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.Rajkumar Paul, 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 Central Crime Branch, Team-X Crime No.186 of 2016. However, in the detention order, it had been stated that in similar case in Crime No.358 of 2015 bail was granted by the Hon'ble III Metropolitan Magistrate Court, George Town, Chennai - 01. Therefore, based on that, the detaining authority has 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 in Central Crime Branch, Team-X Crime No.186 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 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 25.07.2016, 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/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

jbm/jer

To

- 1.The Principal Secretary to Government of Tamil Nadu,
Home, (Prohibition and Excise (XVI) Department),
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Chennai - 600 009.
 - 2.The Commissioner of Police,
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Chennai.
 - 3.The Inspector of Police,
Central Crime Branch - I
Video Piracy Cell
Team X Greater Chennai,
Egmore.
 - 4.The Superintendent,
Central Prison,
Puzhal,
Chennai - 600 066.
- (In duplicate for coommunication to Detenue)

5.The Public Prosecutor,
High Court, Madras.

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

H.C.P.No.2033 of 2016

MV(CO)
VR(13/04/2017)



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