

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.2084 of 2016

M. Rekha ... Petitioner/Wife of the detenue

Vs

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007 Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus or any other appropriate writ order in the nature of writ to call for the records in connection with the order of detention passed by the second respondent in his proceedings Memo No.1018/BCDFGISSSV/2016 dated 02.09.2016 against petitioner's husband K. Muthuraj, S/o Karuppasamy, aged 28 years, who is confined at Central Prison at Puzhal, 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.Antony Selvaraj
for Mr. Subash Babu

For respondents : Mr.V.M.R. Rajentren
Additional Public Prosecutor

ORDER

(Order of the Court was made by S. NAGAMUTHU,J.,)

The petitioner, who is the wife of one K. Muthuraj, S/o Karuppasamy, aged 28 years, has come forward with this petition, challenging the detention order passed by the second respondent

dated 02.09.2016 against her husband branding him as a "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that the conclusion of the detaining authority that the detenu was likely to be released on bail in connection with the case in Cr.No.728 of 2016 is based on the irrelevant material and to arrive at such a conclusion, there was no material placed before the detaining authority at all.

4. A perusal of the detention order would go to show that the detenu is involved in Cr.No.728 of 2016 for the offence under Secs.147, 148, 341, 302 IPC. Totally there are eight (8) accused and no one was granted bail by any Court, but the detaining authority has come to the conclusion that there was real possibility of the detenu coming out on bail. The said conclusion was based on the fact that in a similar case in Cr.No.809 of 2014, the Principal Sessions Court, Chennai granted bail.

5. The learned counsel for the petitioner submitted that when no accused in this case has been granted bail by any Court, the consideration made by the detaining authority that the accused has got nothing to this case, but in a similar case, he was granted bail is not correct. In this regard, the learned counsel relies on the judgment of the Hon'ble Supreme Court in the case of Huidrom Konungjao Singh vs State of Manipur and Others reported in 2012 (3) MLJ (Crl) 794 (SC), wherein, in paragraph 14, the Apex Court held as follows:

"14. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely because somebody else in similar case had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been

enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

6. Applying the same, in the present case, having regard to the said fact that no accused has been granted bail by any Court, we hold that the detention order, on the assumption that there is real possibility of the detenu coming out on bail is not correct. Therefore, the detention order is liable to be quashed.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in Memo No.1018/BCDFGISSSV/2016 dated 02.09.2016 passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007
3. The Public Prosecutor, High Court, Chennai
4. The Superintendent, Central Prison, Puzhal, Chennai
5. The Joint Secretary to Govt
Public(Law & Order)
Fort.St. George, Chennai 9

+1 CC to W.M. Abdul Majeeth, sr 22920

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