

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.2111 of 2016

S.Gayathri
...Petitioner

Vs

1. State of Tamil Nadu,
Rep. By the Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009
2. The District Magistrate and
the District Collector,
Salem District.
....Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ, order or Direction in the nature of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 05.09.2016 in C.M.P.No/26/Goonda/Salem City/2016 against the petitioner's husband, detenu Raja, male, aged 36, S/o Marimuthu, who is confined at Central Prison, Salem and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : M/s Karan and Uday

For respondents : Mr.V.M.R. Rajentren,
Addl. Public Prosecutor

ORDER

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

The petitioner, who is the wife of the detenu Raja, has come up with this Habeas Corpus Petition, challenging the detention order passed against the detenu Raja by the second respondent, vide proceedings C.M.P.No/26/Goonda/Salem City/2016 dated 05.09.2016.

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 though bail application was filed in CrI M.P.No.2882/2015 before the Principal Sessions Judge, Salem in respect of Crime No.257/2016 on the file of Mettur Police Station and the same was dismissed on 23.8.2016, there was no further bail application pending as on the date of passing of the detention order

by the second respondent in Crime No.257/2016 and the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which case there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

4. The learned Additional Public prosecutor would submit that in the Special report submitted by the Inspector of Police, there is a statement to the effect that the relatives of the detenu were taking steps to file bail application seeking bail in connection with the case in Crime No.257/2016.

5. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in Crime No.257/2016 on the file of Mettur Police Station. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority, except the report of the Inspector of Police. Even the report of the Inspector of Police does not spell out as to how he came to know that the relatives were taking steps to file application seeking bail. Full details as to who are

those relatives, who were taking steps to file bail application also have not been mentioned. Thus, in our considered view, without making proper application of mind relating to these facts, the detaining authority has passed the detention order. Therefore, we are inclined to set aside the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 5.09.2016, 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.N.J.,) (A.S.M.J.,)
27-04-2017

Speaking Order/ Non-Speaking Order

Index : Yes/no

Internet : Yes/no

jbm/sts

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009
2. The District Magistrate and
the District Collector,
Salem District.
3. The Public Prosecutor, High Court, Chennai.

S.NAGAMUTHU,J.
And
DR.ANITA SUMANTH,J.,

jbm/sts

Order in
H.C.P.No.2111 of 2016

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