

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.04.2017

CORAM

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

H.C.P No.2262 of 2016

E.Usha

...Petitioner

Vs

1. The Secretary to the Government
Prohibition & Excise (Home) Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.

....Respondents

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 26.09.2016 in SC No.32/2016 against the husband of the petitioner, detenu Ellappan, male, aged 34, S/o Devaraj, 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 : Mr.V.Veluchamy

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 the detenu Ellappan, S/o Devaraj, has come up with this habeas corpus petition, challenging the detention order passed against Ellappan S/o Devaraj, by the second respondent, vide proceedings SC No.32/2016 dated 26.09.2016.

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 there was no bail application pending in Crime No.366/2016. 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.366/2016.

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.366/2016 on the file of Shoalagiri 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 26.09.2016, 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.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to the Government
Prohibition & Excise (Home) Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri.
3. The Superintendent,
Central Prison, Salem.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-9.
5. The Public Prosecutor, High Court, Chennai.

SV(CO)
VR(11/5/2017)

Order in
H.C.P.No.2262 of 2016



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