

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.2387 of 2016

Vijaya kumar ...Petitioner/Brother of the  
detenue

Vs

1. State of Tamil Nadu,  
Rep. By the Secretary to the Government,  
Prohibition and Excise Department,  
Fort St. George,  
Chennai - 600 009
2. The Commissioner of Police,  
Greater Chennai,  
Vepery,  
Chennai - 600 007.
3. The Inspector of Police,  
S-11, Tambaram Police Station,  
Chennai - 600 059. ....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, calling for the entire records leading to passing of the order of detention under Act 14/82 vide detention order Memo No.BCDFGISSSV/1062/2016 dated 20.09.2016 on the file of the 2<sup>nd</sup> respondent, against petitioner's brother by name Kutty @ Purushothaman and quash the same and consequently direct the respondents herein to produce the said detenu before this Hon'ble Court from Puzhal Central Prison, Chennai and thereafter set him at liberty.

For Petitioner : M/s.S.Palani

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 brother of the detenu Kutty @ Purushothaman, has come up with this Habeas Corpus Petition, challenging the detention order passed against the detenu Kutty @ Purushothaman, by the second respondent, vide proceedings BCDFGISSSV No.1062/2016 dated 20.09.2016.

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 applications were filed in Cr1 M.P.Nos.5596/2016, 5595/2016 and 5594/2016 before the Court of Judicial Magistrate, Tambaram, Chennai, in respect of Crime Nos.2028/2016, 2112/2016 and 2244/2016 on the file of S11 Tambaram Police Station and the same are pending. He has not moved any bail application for S11 Tambaram Police Station for the Cr.No.2278/2016. There was no further bail application pending as on the date of passing of the detention order by the second respondent in Crime No.2278/2016 and the detaining authority has stated that the relatives of the detenu were taking steps to file bail application in Cr.No.2278/2016, 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.2278/2016.

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.2278/2016 on the file of S11 Tambaram 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 20.09.2016, 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/  
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. State of Tamil Nadu,  
Rep. By the Secretary to the Government,  
Prohibition and Excise Department,  
Fort St. George,  
Chennai - 600 009
2. The Commissioner of Police,  
Greater Chennai,  
Vepery,  
Chennai - 600 007.
3. The Inspector of Police,  
S-11, Tambaram Police Station,  
Chennai - 600 059.
4. The Superintendent, Central Prison, Puzhal, Chennai.
5. The Joint Secretary to Government,  
Public (Law & Order), Fort St. George, Chennai-9.
6. The Public Prosecutor, High Court, Chennai.

Order in  
H.C.P No.2387 of 2016

SDR 18.05.2017