IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

H.C.P.No.2405 of 2016

K.Yogalakshmi .. Petitioner

Vs.

1.The State represented by its
The Secretary to Government(Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai 600 009.

2.The Commissioner of Police,
Salem City, Salem. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records of pertaining to the order of dated 2.11.2016 passed by the 2nd respondent in C.M.P.No.78/Goonda/Salem City/2016 and quash the same and produce the detenu M.Karikalan, aged about 28 years, S/o Muthusamy, before this Court and set him at liberty and detenu now has been confined at Central Prison, Salem.

For Petitioner : Mr.S.Manoharan
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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ORDER

[Order of the Court was made by M.MURALIDARAN, J.]

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, M.Karikalan, male, aged 28 years, S/o Muthusamy, to issue a Writ of Habeas Corpus, to call for the records of pertaining to the order of dated 2.11.2016 passed by the 2nd respondent in C.M.P.No.78/Goonda/Salem City/2016 and quash the same and produce the detenu M.Karikalan, aged about 28

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years, S/o Muthusamy, before this Court and set him at liberty and detenu now has been confined at Central Prison, Salem.

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 in the ground case a bail application in Crime No.354/2016 was dismissed on 25.10.2016, 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.354/2016.

5. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no bail application pending in Crime No.354/2016 on the file of Hasthampatty 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.

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6.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 02.11.2016 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.The State represented by its
The Secretary to Government(Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai 600 009.

2.The Commissioner of Police,
Salem City, Salem.

3.The Public Prosecutor,
High Court, Madras.

4. The Superintendent,
Central Prison,
Salem.

5. The Joint Secretary to Government,
Public Law and Order,
Fort St. George, Chennai-9.

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RSK(CO)
RS(08/05/2017)

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