

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

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THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

and

THE HONOURABLE MR.JUSTICE S. BASKARAN

H.C.P.No. 2431 of 2016

Magabhun Nisha

..Petitioner

Vs.

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

2. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore District.

..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, relating to the detention order in C.No. 49/G/IS/2016 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son M. Farook Abdullah @ Farook S/o. Mohammed Musthafa aged about 25 years, the detenu now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner :: Mr.D. Gopikrishnan
For Respondents :: Mr.V.M.R.Rajentren,
 Additional Public Prosecutor

ORDER

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

The petitioner, who is the mother of the detenu M. Farook Abdullah, S/o. Mohammed Musthafa, has come up with this habeas corpus petition, challenging the detention order passed by the 2nd respondent, vide proceedings in C.No. 49/G/IS/2016 dated 22.10.2016.

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 the bail application filed C.M.P. NO. 9828/2016 by the detenu in respect of the first adverse case in Crime No. 287/2016 on the file of C-3 Saibaba Colony Police Station, Coimbatore City, was dismissed by the learned Judicial Magistrate No.II, Coimbatore, and there was no fresh bail application filed in respect of the said case, 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 1st adverse case in Crime No.287/2016 on the file of C-3 Saibaba Colony Police Station, Coimbatore City.

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.287/2016 on the file of C-3 Saibaba Colony 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

**M.V. MURALIDARAN,J.,
AND
S. BASKARAN,J.,**

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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 22.10.2016, passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

**(M.V.M.J.,) (S.B.J.,)
12.05.2017**

Speaking Order/ Non-Speaking Order

Index : Yes/no

Internet: Yes/no

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To

1. The Secretary,
Home, Prohibition
and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore District.
3. The Public Prosecutor,
High Court, Chennai.

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