

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

H.C.P.No.2489/2016

R.Chithra

... Petitioner

Vs

1. The Inspector of Police,
N2. Kasipuram Police Station,
Chennai-13.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.
3. The Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George
Chennai 600 009.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing the respondents to produce the petitioner's son Dinesh Kumar @ Dinesh, male, aged 24 years, son of Ramesh, detained under Act 14/1982 vide order No.1127/BCDFGISSV/2016 dated 03.11.2016 and now confined at Central Prison II, Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records and setting aside the order of detention bearing No.1127/BCDFGISSV/2016 dated 03.11.2016 on the file of the 2nd respondent.

For Petitioner : Mr.L.Baskaran
for Mr.J.B.Solomon Peter Kamaldoss
For Respondents : Mr.E.Raja,
Additional Public Prosecutor

ORDER

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

Though the matter stands posted to June 2nd week by the earlier order passed by this Court dated 12.04.2017, we are

inclined to take up this case in view of the submission made by the learned Counsel for the petitioner, that for the co-accused, namely, A1 in the ground case in N.2 Kasimedu P.S.Cr.No.998/2016, this Court has already set aside the detention order on the very same point in HCP.No.62/2017 dated 12.05.2017.

2. This Habeas Corpus Petition is filed, by the mother of the detenu, namely, Dinesh Kumar @ Dinesh, son of Ramesh, aged about 24 years, to issue a Writ of Habeas Corpus, to call for the records, relating to the detention order vide order No.1127/BCDFGISSV/2016 dated 03.11.2016, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Puzhal II, Chennai, and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

3. The petitioner has been arrayed as 4th accused in the ground case. The detention order has been passed on the ground that the petitioner has filed the 2nd bail application and in the similar case in F1 Chindadripet P.S.Cr.No.809/2014, bail was granted in CrI.M.P.No.17395/2014 by the Principal Sessions Judge, Chennai.

4. The learned Counsel appearing for the petitioner would submit that the copies given to the detenu are illegible, especially, with reference to the confession statement. The detenu does not know how to read and write in English. There is no imminent possibility of the detenu coming out of bail merely on the sole ground of pendency of the 2nd bail application in ground case. The fact that the first application has been dismissed by the very same court would also show that the reason assigned cannot be sustained in the eye of law. The similar case relied upon by the detaining authority involves different facts. Merely because, the case involves the offence under Section 302 of IPC, no similarity would be attached. No Counter affidavit has been filed.

5. The learned Additional Public Prosecutor would submit that though the co-accused was released on bail, considering the facts and circumstances of the case, the present Habeas Corpus Petition has to be dismissed as there is application of mind on considering the relevant facts.

6. What is applicable to the co-accused is also applicable to the detenu also. The only difference is that the co-accused in HCP.No.62/2017 is arrayed as A1 in Crime No.998/2016 whereas

the detainee is A4. In all other aspects, the issues of law are one and similar. Mere pendency of the second bail application, that too, after dismissal of the earlier application cannot be a ground to substantiate the decision to pass the detention order. Similarly, mere involvement in the major offence under Section 302 IPC cannot give the colour of similarity, as the facts of the case will have to be seen and understood and placed on record for coming to the subjective satisfaction. In such view of the matter, we are inclined to quash the impugned order.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 03.11.2016, 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/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Inspector of Police,
N2. Kasipuram Police Station,
Chennai-13.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.
3. The Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George
Chennai 600 009.
4. The Superintendent of Police,
Central Prison II, Puzhal II, Chennai.

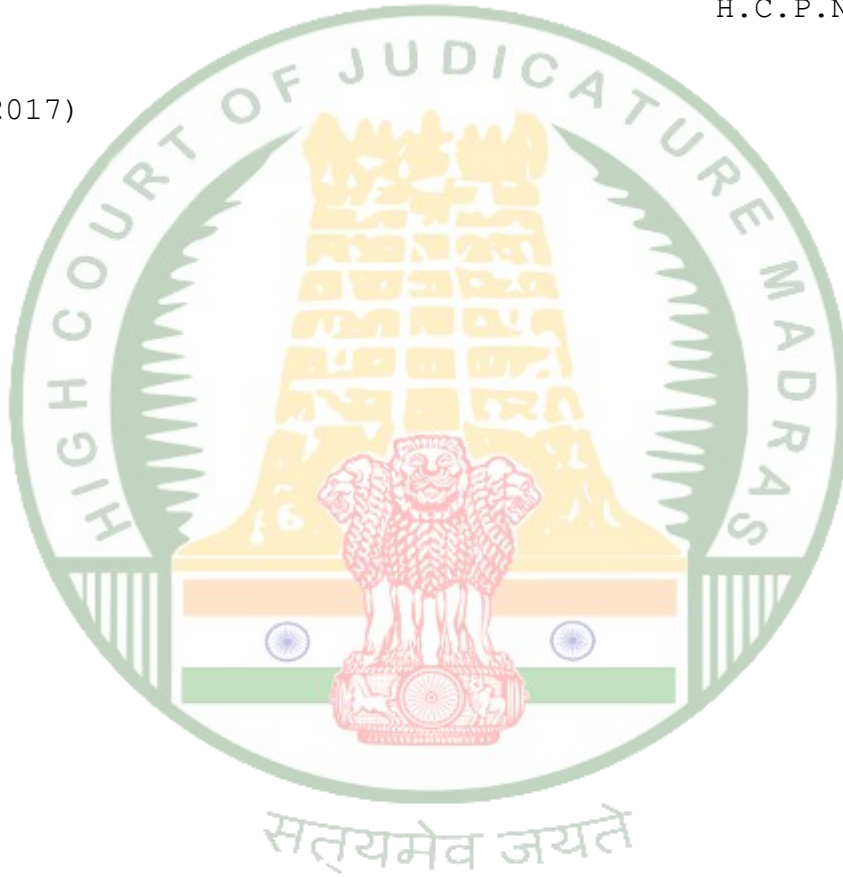
5. The Additional Public Prosecutor,
High Court, Madras.

6. The Joint Secretary to Government,
Public (Law & Order)
Fort Saint George, Chennai-9.

+1cc to mr.L.Baskaran, Advocate Sr. 37592

H.C.P.No.2489/2016

AK (CO)
VR(06/06/2017)



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