

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

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

H.C.P No.2503 of 2016

Munavarunisha

...Petitioner

Vs

1. State of Tamil Nadu,
Rep. By the Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

2. The District Magistrate and
the District Collector,
Dharmapuri.

....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 to call for the records in connection with the order of detention passed by the second respondent dated 10.09.2016 in S.C.No.23/2016 against the petitioner's son, detenu Musthaffa, male, aged 32, S/o Shajakhan, 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.

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For Petitioner : Mr.A.Ramesh
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 mother of the detenu Musthaffa, has come up with this Habeas Corpus Petition, challenging the detention order passed against the detenu Musthaffa by the second respondent, vide proceedings S.C.No.23/2016 dated 10.09.2016.

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.386/2016 and 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.386/2016.

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.386/2016 on the file of Karimangalam 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 10.09.2016, 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(CS VI)

//True Copy//

Sub Assistant Registrar

jbm/sts
To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009
2. The District Magistrate and
the District Collector,
Dharmapuri.
3. The Public Prosecutor,
High Court, Madras.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.

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srg 28/04/2017