

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

CORAM

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

H.C.P.No. 2647 of 2016

Sathya

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Principal Secretary,
Department of Home, Prohibition
and Excise,
Secretariat, Chennai - 600 009.
 2. The Commissioner of Police,
Greater Chennai, Veppery,
Chennai - 600 007.
 3. The State rep. by
The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai - 600 088.
- ..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, in Memo No. 1176/BCDFGISSV/2016 dated 22.11.2016 on the file of the 2nd respondent and quash the detention order as illegal and direct the respondents to produce the detenu Aravindan S/o. Anandan, aged about 23 years, detenu now confined at Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner :: Mr.G. Pavendhan

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

O R D E R

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

The petitioner, who is the wife of the detenu Aravindan, S/o. Anandan has come up with this habeas corpus petition, challenging the detention order passed by the 2nd respondent, vide proceedings in Memo No.1176/BCDFGISSSV/2016 dated 22.11.2016.

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 the Detaining Authority has passed the order of detention for the reason that the bail petition filed by the detenu in Crl.M.P. No. 3034 of 2016 in respect of the ground case in Crime No. 2164/2016 on the file of S-8 Adambakkam Police Station, before the Court of Principal District and Sessions Judge, Chengalpattu, is pending. According to the learned counsel for the petitioner, by mere pendency of bail application, there cannot be any presumption that the detenu would come out on bail. Further, the learned counsel would submit that the Detaining Authority, by placing reliance on a similar case in Cr.No.384/2015 on the file of R-4 Soundarapandiyanar Angadi Police Station wherein bail was granted by the Court of Sessions, Chennai in Crl.MP.No.2805/2015 and without even furnishing full details about the said similar case, has arrived at the subjective satisfaction and came to a conclusion that there is a real possibility of the detenu coming out on bail. Therefore, the learned counsel would submit that there is total non-application of mind on the part of the Detaining Authority in passing the order of detention and as such, the detention order is vitiated and the same is liable to be set aside.

4. Heard the learned Additional Public prosecutor, who would submit that the order of detention has been passed on cogent and sufficient materials and it does not warrant any interference, at the instance of the petitioner.

5. We have considered the rival submissions. As rightly contended by the learned counsel for the petitioner, when a bail application is pending, it cannot be presumed that the detenu would come out on bail and mere pendency of the bail application would not enable the Detaining Authority to conclude that the Court would certainly grant bail to the detenu. It is nothing

but pre-judging the matter. The Detaining Authority has also placed reliance on a so-similar case wherein bail was granted to an accused, but he did not furnish the details of the said similar case and it is not known as to whether it is in respect of a co-accused of the detenu in the ground case. As such, we are of the considered view that the Detaining Authority has passed the order on total non-application of mind and in the absence of any cogent materials available on record, has arrived at the subjective satisfaction to the effect that the detenu is likely to be released on bail and as such, the detention order is vitiated and the same is liable to be set aside.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 22.11.2016, 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.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

nv
To

- 1) The Principal Secretary,
Department of Home, Prohibition
and Excise,
Secretariat, Chennai - 600 009.
 2. The Commissioner of Police,
Greater Chennai, Veppery,
Chennai - 600 007.
 3. The Inspector of Police,
S8, Adampakkam Police Station, Chennai-88
 4. The Superintendent, Central Prison,
Puzhal, Chennai
 5. The Joint Secretary to Government,
Public (L& O), Fort Saint George, Chennai-9.
 6. The Public Prosecutor,
High Court, Chennai.
- +1cc to Mr.G.Pavendhan, Advocate sr.37384

H.C.P. No. 2647 of 2016

sks(co)
ss(20/6/2017)