

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.2656 of 2016

Palaniyammal
Petitioner

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Vs

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

2. The District Magistrate and
District Collector,
Namakkal District,
Namakkal

.....Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus or any other appropriate Writ, Order or Direction more specifically in the nature of a Writ of Habeas Corpus to call for the records of the detention made in CMP No.38/GOONDA/2016/M1 dated 10.11.2016 passed by the District Magistrate and District Collector, Namakkal District, Namakkal the second respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Kanagaraj, S/o Angamuthu, aged 47 years now confined in Central Prison, Salem at liberty.

For Petitioner : Mr.R. Balakrishnan

For respondents: Mr.V.M.R. Rajentren
Addl. Public Prosecutor

ORDER

(Order of the Court was made by M.V. MURALDARAN,J.,)

The petitioner, who is the father of the detenu Kanagaraj, S/o Angamuthu, aged about 47 years has come up with this habeas corpus petition, challenging the detention order passed against Kanagaraj by the second respondent, vide proceedings No.CMP No.38/GOONDA/2016/M1 dated 10.11.2016

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 though there was no bail application pending in Crime No.374/2016 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.374/2016.

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.374/2016 on the file of Nallipalayam 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 10.11.2016, 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

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To

1. State rep by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009
2. The District Magistrate and
District Collector,
Namakkal District,
Namakkal
3. The Superintendent,
Central Prison,
Salem.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Chennai.

HCP No.2656 of 2016

SK(CO)
RS(12/06/2017)