

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.1061/2015

Anto

... Petitioner

Vs.

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

2.The Detaining Authority/Commissioner of Police,
Coimbatore City, Coimbatore.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the second respondent in C.No.15/G/IS/2015 dated 27.03.2015 and quash the same thereby direct the detenu A.Shindo Ando S/o.Ando, Remand prisoner 1262 detained in Central Prison, Coimbatore to be produced before this Court and set the detenu at liberty.

For Petitioner : Mr.B.Vijay
For RR1&2 : Mr.M.Maharaja,
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C.No.15/G/IS/2015 dated 27.03.2015, whereby the detenu, by name, A.Shindo Ando S/o.Ando aged about 24 years was ordered to be detained under the provisions 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 of 1982) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3. Learned counsel appearing for the petitioner submitted that the Detaining Authority has relied on a similar case in Cr.No.1252/2012 registered by the B5 Singanallur Police Station for the offences under Sections 395 r/w. 397 IPC, wherein bail was granted by the learned Principal District and Sessions Judge, Coimbatore in CrI.MP.No.77/2013 to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case. But, in the Booklet, the copy of the bail application and bail order of the similar case has been furnished only in the English version and not in the vernacular version. This would deprive the detenu from making effective representation. Thus, the detention order is vitiated on this ground alone and the same is liable to be quashed.

4. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. We have heard the learned counsel for both sides with regard to the facts.

6. A perusal of the Grounds of Detention, in particular paragraph No.7, it is seen that the Detaining Authority has placed reliance on a similar case to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case. But a perusal of the booklet supplied to the detenu it is seen that the copy of the bail application and bail order in respect of the similar case has been furnished only in English version and has not been furnished in the vernacular version. This has resulted in the detenu being deprived of making an effective representation. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

7. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the

impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

8. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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(CO)

//True Copy//

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To

Sub Assistant Registrar

1. The State of Tamil Nadu,
Rep. by its Secretary
Home, Prohibition & Excise Department
Fort St. George, Chennai 600 009.
2. The Detaining Authority/Commissioner of Police,
Coimbatore City, Coimbatore.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison,
Coimbatore.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.B.Vijay, Advocate, S.R.No.43123

H.C.P.No.1061 of 2015

KGK(CO)
CA(15/09/2015)